Supreme Court, U.S.
FILED

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NO. 952046 APR 30 1996

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

EMMA VICTORIA HOWARD,

PETITIONER

VS.

THE TOWN OF CHAPEL HILL, LOIS MAGNELL -- SUPERINTENDENT OF OPERATION, INDIVIDUALLY AND IN HER CAPACITY, ROBERT GODDING -- DIRECTOR OF TRANSPORTATION, INDIVIDUALLY AND IN HIS CAPACITY

DEFENDENTS

ON PETITION FOR A WRIT OF CERTIORARI

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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129.8P

Questions Presented For Review

Whether error is on the part of the Middle District For North Carolina in failing to find illegal employment discrimination on the basis of the facts alleged in the pleadings and error on the part of the United States Court of Appeals for the Fourth Circuit in affirming the reasoning of the United States District Court.

Whether the Federal Circuits, in its failure to accept a critical fact finding of the lower court requirement, violated rule 56(c) and (e), Rules of Civil Procedure, also in conflict of litigant's right to trial by jury, Milwee, 1960 510 F.Supp.279.

The Petitioner respectfully requests that a Writ of Certiorari issue to review the judgment and opinion entered in this case by the United States Court of Appeals Fourth Circuit on Jan. 31, 1996.

Opinions

The January 31, 1996 opinion of the United States Court of Appeals for the Fourth Circuit is unreported, and is set forth in Appendix A to this Petition at 1a-2a. The decision and order of the United States District Court for the Middle District of North Carolina is unpublished and is set forth in Appendix B to this Petition 1a - 17a.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered an opinion in this case on January 31, 1996. No petition or suggestion for rehearing was submitted to the Court of Appeals. This petition for a Writ of Certiorari is taken from the January 31, 1996 opinion of the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Middle District of North Carolina pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. 2000e-2, and 42 U.S.C.A. 1983.

Constitutional and STATUTORY Provision

The statutes challenged by the Petitioner is 1964 Civil Rights Act Title VII, 28 U.S.C.A. Section 1331 (Federal Question) and 28 U.S.C.A. Section 1343 (a)(3) and (a)(4). The matter of controversy arises under 42 U.S.C.A. Section 1981, 42 U.S.C.A. 1983, 42 U.S.C.A. Section 2000d, 42 U.S.C.A Section 2000a, 28 U.S.C.A. Federal Rule 56 (c) and (e), 42 U.S.C.A. Section 2000e based on the Fourteenth (14) Amendment to the United States Constitution. The foregoing statutes and Constitutional provisions are set forth below.

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A. Affirmative Action is of great value for all minorities if they are hired for the job because they are qualified and not because they are easily systematized

B. To show all America, to be equal is not determined whether one can live as an individual, but with individuals, in pure and naturalness under the laws

C. I've always lived my life as a good citizen by helping others and doing what's just. By coming to the Supreme Court, I will be representing the people of the United States, who have been unjustly represented as it pertains to me

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CONSTITUTIONAL AND STATUTORY PROVISION

28 U.S.C.A. Section 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C.A. Section 1343

The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a state administrative agency or a rate-making body of a state political subdivision, where (a)(3) where the order has been made after reasonable notice and hearing, and (a)(4) a plain, speedy and efficient remedy may be had in the courts of such state.

42 U.S.C.A. Section 1981 Equal rights under the law.

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

42 U.S.C.A. 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of

any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C.A. 2000a

Prohibition against discrimination or segregation in places of public accommodation

(a) Equal access

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

42 U.S.C.A. 2000d

Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin.

No person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C.A. 2000e

Definitions

For the purposes of this chapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, un-incorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agency of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C.A. Section 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C.A. Section 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidian body which is representing or actively seeking to represent employees or employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through

which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any persons chosen by such officer to be on such officer's personal staff, on an appointee on the policy making level or an immediate advisor with respect to the exercise of the constitutional or legal power of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of State, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C.A. Section 401 et seq.], and further includes any governmental industry, business, or activity.

28 U.S.C.A. Federal Rule 56. Summary Judgment

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the

matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

AMENDMENT XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of The Case

This Petitioner seeks a review of the decision of the United States Court of Appeals For The Fourth Circuit on January 31, 1996 upholding the reasoning of the United States District Court for the Middle District of North Carolina at Durham.

The Petitioner, E. Victoria Howard, filed a timely charge of race discrimination with the Equal Employment Opportunity Commission (EEOC) and brought this action within ninety,(90) days of her receipt of a right to sue. Petitioner received this right to sue on October 14, 1993, and filed her charge in the United States District Court for the Middle District of North Carolina, on January 13, 1994, cause of action was racial discrimination under Title VII - Civil Rights Act 1964.

The Petitioner filed a retaliation charge January 24, 1994 with Equal Employment Opportunity Commission (EEOC) and brought this action within 90 days of her receipt of a right to sue. Petitioner received this right to sue June 1995 and filed her charge in the United States Court of Appeals for the Fourth Circuit.

Petitioner is a non-lawyer and filing Pro-Se.

Petitioner, E. Victoria Howard, filed a civil rights action alleging violations of 42 U.S.C.A. 1983 and 42 U.S.C.A Section 2000, et.seq. against the Town of Chapel Hill and two of its officers. Among other things, Petitioner asserted that she was denied a run selection because of her race.

Defendant, Lois Magnell-Superintendent of Operation Conducted a run pick on September 29, 1992. Selection process is done on a rotation basis starting from highest seniority driver to lowest seniority driver.

Petitioner was at all material times a bus driver for the Town's transportation department. In that position, Petitioner always performed excellent merits and outstanding work.

Over a period of time, Petitioner filed grievances and/or contested issues dealing with her contentions of unfairness as it relates to personal leave, funeral leave, merit increases, and the treatment of Black employees differently from White employees.

On September 29, 1992, a White male bus driver with less seniority was given the run that was selected by Petitioner who had

higher seniority. Petitioner is an Afro-American female. Petitioner's name was removed after Petitioner had made her selection.

Defendants filed a summary judgment motion and Petitioner counsel responded with these arguments set forth.

Cases involving constitutional and civil rights issues are frequently unsuitable for summary judgment because it is felt that a fuller record is necessary to properly decide the issues in the case. The Defendants knowingly obstructed justice when they failed to present answers to interrogatories with their pleading for summary judgment. Asker v. Hargrove, 1971, 91 S.Ct. 856, 401 U.S. 476.

In the instant case Petitioner has submitted affidavits presently a different account of the same event which is the basis of the complaint.

Likewise, the affidavits rebuts defendant's professed innocent motives and thereby present issues of fact that can be tried. Rodriquez v. Board of Education of Eastchester Union Free School Dist. C.A. 2d. 1980, 620 F 2d 362.

Petitioner exercised her right through the Town's Grievance procedure to explain the loss of paid hours, sick time accrual, vacation accrual and merit increase because of the discriminatory actions that the Defendant Lois Magnell had administered because of denying petitioner the "P" run.

Defendant Lois Magnell conducted all Part-time run picks.

Petitioner, according to Part-time Driver 1's roster in August 1992, listed 9 in seniority while the white male bus driver listed 17 on the seniority list (see Appendix P).

Petitioner was improperly evaluated and consequently did not receive proper merit raises as a result of discriminatory treatment by Defendant Lois Magnell.

Defendant Robert Godding intensified his abuse and pattern of discrimination conduct against Petitioner after Petitioner requested grievance hearing in violation of State and Federal law.

In parallel with favoritism extended by Defendant Magnell to white transportation drivers, Defendant Magnell, Defendant Godding and Cal Horton-Town Manager have systematically discriminated against Petitioner by the following actions such as:

(a) Denial of promotion opportunities and promotion by repeated unwarranted paraphrases,

(b) Unequal, discriminatory and desperate review of work activities,
(c) Imposition of adverse work conditions and unequal work demands based on race, and
(d) Denial of vacation and sick accrual and proper merit increase solely on race.

Defendant Town Of Chapel Hill is a body corporate within the state of North Carolina and at all times relevant employed Cal Horton-Town Manager, Defendant Robert Godding and Defendant Lois Magnell. Defendant Town Of Chapel Hill has received and continues to receive substantial Federal, State and Local funding.

Petitioner Emma Victoria Howard is an Afro-American female citizen of the United States and a resident during filing of discrimination charge and a resident of Orange County, North Carolina.

Petitioner Emma Victoria Howard brings this suit to recover for Federal, State Statutory and State Common law violations.

Defendants at all times and in all their actions acted under color of law.

Defendant Robert Godding is and at all times described herein the Director for Defendant Town's transportation department.

Defendant Godding's responsibilities include managing the department, recommending proper increases for performance evaluations, handling department grievances and all administrative duties. He is sued in his individual and official capacity. Defendant Godding acted under color of State Law.

Cal Horton is and was at all times described, in the complaint, as Town Manager of Chapel Hill. He was responsible for ensuring that all local ordinances, regulations, State and Federal statutes were complied with.

Defendant Lois Magnell was at all times relevant hereto operations Superintendent for Defendant Town's transportation department. Defendant Lois Magnell is being sued individually and in her official capacity as transportation department operation superintendent. At all times and in all her actions described herein, Defendant Magnell acted under color of state law.

On appeal to the United States Court of Appeals for the Fourth Circuit, Petitioner argued that the United States District Court for the

Middle District of North Carolina, Judge Frank W. Bullock, Jr. erred in his decision.

Reasons for Granting the Writ

This court should issue a writ of certiorari because the role on the part of the Middle District for North Carolina and the United States Court of Appeals for the Fourth Circuit in deciding a defendants motion for summary judgment is not to resolve disputed factual issues, but rather than to determine as a whole, supports any issues that require a trial. E.E.O.C. vs. Patrick Henry - Education Assistant, N.D. Ohio 1990, 741 F. Supp. 670; Capital Data Corp. vs. Capital Nat. Bank, S.D.N.Y 1991, 778 F. Supp. 669.

The decision of the Court of Appeals below is in conflict with the decision of this court. First National Bank of Arizona *v.* Cities Services Co., 391 U.S. 253, 288 - 289(1968).

The Federal Circuit did not follow rule 56(c) and (e).

The Town of Chapel Hill's unequal practices based on race constitutes a discriminatory regulation so as to make the law constitutionally unstable.

The Civil Rights Act of 1964, as amended, 42 U.S.C.A Section 1983, prohibits any person acting under color of law from discriminating against any person on account of race.

Defendants have jointly and severely conspired and continued to act against Petitioner under color of law in their arbitrary and capricious policies and discriminatory practices, thereby depriving Petitioner of her right to equal and non-discriminatory treatment under the law.

Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C.A Section 2000(a) et. seq. and the Civil Rights Act of 1991 prohibit discrimination in employment conditions or other incidents of employment.

Petitioner has been discriminated against by reason of her race in the conditions and incidents of employment, causing serious and permanent injury and physical anguish to Petitioner (see Appendix M8-M9).

Defendant Robert Godding denied promotion to Petitioner, gave her unfair performance evaluation based upon falsified no-show reports and assigned Petitioner to an unreasonable work schedule in unlawful

taliation for Petitioner filing appropriate grievances in violation of and ohibited by Title VII, 42 U.S.C.A Section 1981.

From the time Petitioner began engaging in protected expressive tivities regarding Defendants' discriminatory practices, Petitioner has ffered unlawful retaliation in that Defendants had harassed her. Such nlawful retaliation is prohibited under Title VII, 42 U.S.C.A Section 000e-3 and Section 2000e-2(a)

As a result of injuries, the Petitioner E. Victoria Howard was nable to attend to her usual daily occupations, duties, labors and vocations which may, in the future, continue to be disabled. (see ppendix M5) 42 U.S.C.A Section 2000e Kamberos vs. G.T.E Automatic lect. Inc. C.A.T. (Ill.) 1979.603 F.2d.598

In the instant case Petitioner has submitted affidavits presenting different account of the same event which is the basis of the complaint. he trial judge should be slow in granting a motion for summary udgment depriving a party of his right to trial by jury where there is easonable indication that a material fact is in dispute. Estepp vs. Norfolk nd W. Ry. Co., C.A. Ky. 1951, 192 F. 2d 889. Etna Ins. Co. vs. Cooper Wells and Co., C.A. Mich. 1956, 234 F.2d.342.[see Appendix F, G and H,J]

Petitioner properly brought employment discrimination action under 42 U.S.C.A. Section 2000d this subchapter was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Albemarle Paper Co. vs. Moody N.C. 1975 95 S.Ct,2362, 422 U.S.405. (see Appendix U)

Defendants presented evidence to show that black and white employees have driven the Sunday Night "P" run. Petitioner filled discrimination charge against the Defendant Town and Defendants to show that all employees possess an equal opportunity to fully enjoy all employment rights. U.S. vs. National Lead Co., C.A.8(Mo.) 1971 438 F.2d 935

Petitioner's affidavits rebuts Defendants' processed innocent motives and thereby present triable issues of fact. Rodriguez vs. Board of Education of Eastchester Union Free School Dist. C.A. 2d. 1980, 620F. 2d 362

A. I have always lived my life as a good citizen by helping others and doing what is just. By coming to the Supreme Court, I will be representing the people of the United States, who have been unjustly represented as it pertains to me.

BEST AVAILAB

The decision of the United States Court of Appeals for the Fourth Circuit was not based on the same Complaint as The United States District Court for the Middle District of North Carolina Durham Division.

Petitioner removed complaint that the Appeals Court based its decision on January 10, 1995 (see Appendix D) a copy of complaint by attorney Curtis Jerome Rodgers. Appendix D and E.)

Petitioner filed grievance against Attorney Curtis Jerome Rodgers to the Bar Association. The Bar Association sent Petitioner a letter informing Petitioner Mr. Rodgers had been disbarred. (see Appendix T).

Without the interrogatory answers, The United States District Court for the Middle District of North Carolina and the United States Court of Appeals for the Fourth Circuit helped in a secondary way by not representing facts realistically and this is an impermissible factor. Instead of dealing with the facts of Petitioner's complaint, the lower courts contents itself with abstractions. The lower courts' results are akin to the child's game of "telephone", in which a message is repeated from one person to another and then another. After some time, the message bears little resemblance to what was originally spoken.

The United States District Court for the Middle District of North Carolina wrote in its judgment decision that [A] municipality cannot be held liable under 42 U.S.C.A Section 1983 on a respondent superior theory.

A municipality is liable for Constitutional violations of its employees under 42 U.S.C.A Section 1983 when its employers violates the constitutional rights of the petitioner under a policy statement ordinance, regulation, or decision officially adopted by that body's officers.

Petitioner presented evidence of facts to the appeals Courts of the Fourth Circuit that if denial of a specific constitutional right is alleged in Civil Rights complaint, action should not be dismissed unless it appears beyond doubt that the petitioner can prove no set of facts in support of her claim that should settle her to relief. Phillips ys. Fisher, D.C. Kan 1977, 445 F. Supp.552 (See Appendix M, P, U and V).

B. Affirmative Action is of great value for all minorities if they are hired for the job because they are qualified and not because they are easily systematized.

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Petitioner filed a grievance in reference to loss of performance evaluation points and charge for standby points on evaluation to Interim Superintendent Mona Moore. Defendant Magnell assigned Sunday Night standby to Petitioner and caused loss of merit increase points.

Ms. Moore removed the standby points and Petitioner's evaluation increased from 91.6 to an over-all total of 94.105. (see Appendix R5) Petitioner filed discrimination claim before the adopted budget fiscal year. This evaluation was based on discrimination charge with E.E.O.C. for September 29, 1992 run pick selection, (See Appendix U).

Ms. Moore was interim Superintendent during retaliation charge to E.E.O.C. by Petitioner on January 24, 1994. Ms. Moore sent Petitioner memo in reference to Friday assignment that she was meeting with Defendant Godding to discuss her findings. (see Appendix R4 and U3 under H2). Ms. Moore based her decision on Defendant Godding's Suggestion.

C. To show all America that to be equal is not determined whether one can live as an individual, but with individuals, in pure and naturalness under the laws.

Anderson v. Liberty Lobby, inc., 477 U.S. 242, 257 (1986), states if the evidence is such that a reasonable jury could return a verdict for the non-moving party. At the summary judgment stage, the trial judge's function is not for himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.

The Supreme Court's decision in Adickes v. S.H. Kress & Co. 398 U.S. 144 (1970) Cities Services and Monsanto Co. v. Spray Rite Service Corp., 465 U.S. 752 (1984) and Bill Johnson's Restaurants Inc. *v.* NLRB, 461 U.S. 731, 475 NII (1983). Petitioner has present evidence of Affidavits by 3 part-time drivers that were at the run Pick on September 29, 1992, in the Middle District of North Carolina, rebutting defendant's professed innocent motives and thereby summary judgment should have been dismissed.

Petitioner's present evidence of Operating Bulletin on Part-Time Run Pick and extra assignment, a part-time roster showing seniority of Petitioner *v.* Ben Allred's seniority.

After Petitioner introduces Part-time run pick procedures, revised June 9, 1992, and August Roster - 1992 showing seniority of part-time drivers, Appendix P, United States Courts of Appeal For the Fourth Circuit reasoned with the Middle Districts of North Carolina.

Petitioner presented evidence from which a jury might return a verdict in her favor. The evidence is a genuine issue of fact that requires a trial.

The petitioner, an Afro-American alleged that every grievance step from Step 1, Lois Magnell - Superintendent of Operation, Step 2 - Robert Godding - Director of Transportation, Step 3, Cal Horton - Town Manager, defendants have, jointly and severally conspired and continued to act against Petitioner under color of law, in their choosing and continuing without interruption of policies of discrimination in violation of the foregoing statute, and have deprived Petitioner of her right to equal and non-discriminatory treatment under law. Defendants have named several grievances Petitioner has made use of all for several employment decisions that allegedly had an adverse impact on Petitioner. Defendants denied Petitioner rights protected by the Fourteenth Amendment.

Petitioner made an attempt to exercise her right through the Towns grievance procedure to explain the loss of paid hours, sick time accrual, vacation accrual, and merit increase because of the discriminatory actions Defendant Ms. Magnell, Superintendent of Operation had administered because of denying Petitioner the "P" run, but defendants tried to make it appear that the 91.6% to 92.96% merit increase was frivolous, in all reality, Ms. Magnell miscalculated and it should have been 94.1% merit increase. Defendant Magnell knew when she removed the "P" run and replaced Petitioner with a standby run, defendant would be jeopardizing Petitioner from receiving an excellent evaluation. Defendant Lois Magnell conducted all part-time run picks. Ms. Moore - Assistant Superintendent, an Afro-American, was not aware of the discriminatory practices involved during a run pick. Ms. Moore - Assistant Superintendent, never conducted a run pick for part-time employees during Petitioner's time of employment for the Transportation Division. Petitioner has been part-time since November 13, 1989.

Petitioner knew the importance of each run pick and how to pick runs that would allow Petitioner to receive excellent to outstanding merit increases.

In Adickes v. S.H. Kress & Co., 398 U.S. at 158-159 this Court relied on the requirements of 56(c) of the Federal Rules of Civil Procedures Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Petitioner never received interrogatory questions to answer, from defendants. Interrogatories would have allowed Petitioner to state facts of the discriminatory manner within the Department of Transportation and throughout its grievance procedure from Step 1 to Step 3.

Petitioner found according to Dunstan v. Suffolk County, State of N.Y.C.A. 2 (N.Y.) 1984; 729 F. 2d 903, amended on other grounds 748 F.2d.69. Municipal employees may partially or completely avoid liability for violations of civil rights by showing that he was acting within scope of his official duties if he can show that his actions were pursuant to official policy he can shift part of his liability to municipality.

Trotter v. City of Chicago, D.C., Ill, 1983 573 F. Supps 1269. Like municipalities officials are liable for their own acts and for those of their agents; however, although municipal employees are agents of municipality, they are not necessarily agents of their superiors.

Conclusion

The decision of the United States Court of Appeals for the Fourth Circuit violates Rule 56(c) and (e) and should not be permitted to stand. By granting this petition, the error of the Courts of Appeals For the Fourth Circuit of the deciding on the wrong complaint can be corrected. The petitioner comes before this court for equal justice under the law.

Respectfully Submitted,
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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-1990

E. VICTORIA HOWARD,

Plaintiff - Appellant,

and

LARRY HOWARD,

Plaintiff,

versus

TOWN OF CHAPEL HILL; ROBERT GODDING, Director;
LOIS J. MAGNELL, Transportation Department
Operations Superintendent,

Defendants - Appelles,

and

CAL HORTON, Town Manager,

Defendant

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Frank W. Bullock, Jr., Chief District Judge. (CA-94-12-1)

Submitted: January 18, 1996 Decided: January 31, 1996

Before HAMILTON and LUTTIG, circuit Judges, and CHAPMAN, Senior Circuit Judge.

Appendix A

Affirmed by unpublished per curiam opinion.

E. Victoria Howard, Appellant Pro Se. *Patricia Lee Holland, Raymond Mark* Davis, CRANFILL, SUMNER & HARTZOG, Raleigh, North Carolina, for Appelles.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's order dismissing her employment discrimination action, which alleged violations under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. 2000e-2 (West 1994), and 42 U.S.C. 1983 (1988). We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Howard v. Town of Chapel Hill, No. CA-94-12-1 (M.D.N.C. Apr. 5, 1995). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

E. VICTORIA HOWARD,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil No. 1:94CV00012
v.	)	
	)	
	)	
TOWN OF CHAPEL HILL; ROBERT GODDING, Director; and LOIS J. MAGNELL, Transportation Department Operations Superintendent,	)	
	)	
	)	
	)	
	)	
Defendants.	)	

ORDER and JUDGMENT

BULLOCK, District Judge

For the reasons set forth in the memorandum opinion filed contemporaneously herewith,

IT IS ORDERED AND ADJUDGED that Defendants' motion for summary judgment on Plaintiff's claims under 42 U.S.C., 1983 is **GRANTED** and these claims are **DISMISSED** with prejudice;

IT IS FURTHER ORDERED AND ADJUDGED that Defendants' motion for summary judgment on Plaintiff's claim under Title VII regarding the September 29, 1992, bus run pick is **GRANTED** and this claim is **DISMISSED** with prejudice;

IT IS FURTHER ORDERED that Plaintiff's Title VII claims regarding funeral absences, employment benefits, and denial of access to grievance procedures are **DISMISSED** without prejudice because Plaintiff has failed to satisfy a condition precedent to the institution of an action in federal court in regard to these claims.

Frank W. Bullock, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

E. VICTORIA HOWARD,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil No. 1:94CV00012
v.	)	
	)	
	)	
TOWN OF CHAPEL HILL; ROBERT GODDING, Director; and LOIS J. MAGNELL, Transportation Department Operations Superintendent,	)	
	)	
	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

BULLOCK, District Judge

This case comes before the court on a motion for summary judgment filed by defendants Town of Chapel Hill, Robert Godding, Director of the Chapel Hill Department of Transportation, and Lois J. Magnell, Transportation Department Operations Superintendent. Plaintiff seeks damages for discrimination on the basis of race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. 2000e et seq. (Title VII), and for Protection Clause pursuant to 42 U.S.C.A. 1983 (Section 1983). Plaintiff is a black female who was formerly employed as a bus driver for Defendant Town of Chapel Hill. Plaintiff alleges that Defendants discriminated against her on the basis of her race by (1) charging against Plaintiff's vacation time two days that Plaintiff failed to report to work after requesting leave to attend a funeral; (2) charging against Plaintiff's vacation time days which Plaintiff failed to report to work; (3) failing to give Plaintiff proper merit pay increases; (4) denying Plaintiff full-time employment benefits; (5) giving a bus route that was selected by Plaintiff to a white male bus driver who had less seniority than Plaintiff; and (6) denying Plaintiff the opportunity to fully appeal her grievances concerning the bus route and the denial of employment benefits. Because Plaintiff has not filed a charge with the Equal Employment Opportunity Commission (EEOC) in regard to Defendants' alleged

discrimination against her as to her funeral absences, employment benefits, and denial of access to grievance procedures, this court is without jurisdiction to adjudicate her Title VII claims regarding these matters. These claims will therefore be dismissed without prejudice. by failing to receive or request a right-to-sue notice, Plaintiff has not met a condition precedent to the institution of an action in federal court in regard to her Title VII claims based on her personal leave and merit increase. These claims will therefore be dismissed without prejudice. Because Plaintiff has failed to produce evidence sufficient to support the rest of her claims, summary judgment will be granted for Defendants on all of Plaintiff's other claims under both Title VII and 42 U.S.C.A. 1983.

FACTS

The following facts are undisputed,[1] except where noted, and are taken from the affidavits of Linda Kay, Scottie Borders, Anita Hackney, Benjamin Allred, Iris Flamer, Robert Godding, W. Calvin Horton, Ralph Karpinos, Lois Magnell, and Mona Moore. Plaintiff, E. Victoria Howard, is a black female who was formerly employed by Defendant Town of Chapel Hill as a part-time bus driver. Defendant Magnell, former Superintendent of Operations for the Transportation Department of the Town of Chapel Hill, supervised Plaintiff until Magnell left that position on disability leave on July 17, 1993. Defendant Godding is Director of the Transportation Department for the Town of Chapel Hill and has held this position since June 13, 1977. Plaintiff alleges that Defendants have discriminated against her because of her race in violation of 42 U.S.C. 1983 and Title VII in regard to the following aspects of her employment with Defendant Town of Chapel Hill: funeral absences, personal leaves, a merit increase, employment benefits, a bus run pick, and the denial of access to the town's grievance procedures.

A. Funeral Absences

On three occasions in 1992, Plaintiff failed to show up for work and was charged with three unexcused absences for attending funerals without obtaining prior approval from Defendant Magnell. Plaintiff challenged these unexcused absences through Defendant Town of Chapel Hill's grievance procedure. Ultimately, the town personnel appeals committee concluded that a dispatcher had excused Plaintiff from work on one of these occasions but that Plaintiff had no excuse for her absences on the other two occasions. Consequently, one of Plaintiff's three formerly unexcused absences was excused through the grievance process. In addition, Defendant Magnell stated that she initially designated all three of Plaintiff's funeral absences as unexcused in accordance with department and town personnel policy in place at the time.

Plaintiff alleges that Defendants discriminated against her by improperly charging her with these absences. Plaintiff offers no evidence in regard to this allegation and Plaintiff has not filed a charge of discrimination with the EEOC in regard to any such discrimination.

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[1]The only evidence that Plaintiff has submitted pertains to the September 29, 1992 bus run pick. She has failed to produce evidence regarding all of her other claims.

B. Personal Leave

From October 1993 to November 1993 Plaintiff failed to report to work as assigned on fifteen separate occasions. As a result, Plaintiff was charged with fifteen unexcused absences by her immediate supervisor at the time, Mona Moore.[2] Plaintiff instituted a grievance through the town's grievance procedure in regard to her having been charged with these absences, but this grievance was unsuccessful. Plaintiff alleges that Defendants discriminated against her by improperly charging her with these absences. Plaintiff offers no evidence in regard to this allegation. On January 24, 1994, Plaintiff filed a charge with the EEOC in regard to this alleged discrimination. Plaintiff has not been issued a right-to-sue letter regarding this charge.

C. Merit Increase

In June of 1993, the Chapel Hill Town Council adopted a budget for fiscal year 1993-94 which included merit pay increases for employees. Pursuant to this budget, employees who received a "satisfactory," "good," or "excellent" evaluation rating received a 1% merit increase in pay. Employees who received an "outstanding" rating received a 1.5% merit increase. Plaintiff received an "excellent" rating for the period from July 1, 1992, to July 31, 1993, and was thus given a 1% merit increase, as did all other employees who received such ratings. Plaintiff, upset that she did not receive an "outstanding" rating, contested her raw score from which her rating was determined and raised several issues as to why her raw score should be increased. Each of these concerns was investigated by her supervisor, Mona Moore. On December 13, 1993, Moore issued a determination, agreeing with an earlier determination by Defendant Magnell, that Plaintiff's raw score should be increased from a grade of 91.6 to 92.96 for the first six months of the evaluation period. However, this new first six-month raw score was still not enough to increase her overall twelve-month rating to "outstanding." As a result, Plaintiff received the 1% merit increase corresponding with her "excellent" rating.

Plaintiff alleges that Defendants discriminated against her by denying her a 1.5% merit increase. Plaintiff offers no evidence in regard to this allegation. Plaintiff filed a grievance under the town's grievance procedure but this grievance was unsuccessful. On January 24, 1994, Plaintiff filed a charge with the EEOC in regard to this alleged

---

[2]Moore, who is a black female, replaced Defendant Magnell as Superintendent of Operations for the Transportation

discrimination. Plaintiff has not yet received a right-to-sue letter on this charge. Department when Defendant Magnell left on disability leave. Moore is not named as a defendant in this case.

D. Employment Benefits

Defendant Town of Chapel Hill's pay and personnel ordinances establish benefit levels for employees in full-time and part-time positions. Under the ordinances, it is required that an employee work an average of 37.5 hours per week over the relevant year in order to be classified as a full-time employee and receive full-time employment benefits for that year. Employees working less than an average of 37.5 hours per week are classified as part-time employees and receive a prorated portion of the town's full-time benefits based upon the number of hours worked. In her position as a part-time bus driver for Defendant Town of Chapel Hill, Plaintiff was receiving a prorated portion of the full-time benefits offered by Defendant Town of Chapel Hill based on the number of hours she worked. Plaintiff alleges that Defendants have discriminated against her by denying her full-time employment benefits for the 1992 year because she was working 37.5 hours or more during some pay periods. Defendants state that the Transportation Department work records show that in 1992 there were only four weeks in which Plaintiff accrued over 37.5 paid hours, and only three weeks in which her actual work hours exceeded 37.5 hours. Defendants state that these records show that Plaintiff worked an average of 26.3 hours per week in 1992 and averaged 29.5 hours paid per week in that year. Defendants state that Plaintiff was therefore properly classified as a part-time employee and entitled only to prorata benefits based upon the number of hours worked, pursuant to town policy. Plaintiff filed a grievance with Defendant Town of Chapel Hill concerning her employment benefits, but this grievance was unsuccessful. Plaintiff offers no evidence concerning this allegation. Plaintiff has not filed a charge of discrimination with the EEOC in regard to this allegation of discrimination.

E. Bus Run Pick

Plaintiff alleges that Defendants discriminated against Plaintiff on September 29, 1992, by giving to a white male bus driver with less seniority than Plaintiff a bus route that was selected by Plaintiff during the bus route selection process which was administered by Defendant Magnell.

The Town of Chapel Hill's bus route selection process is conducted during a "run pick" meeting in which bus drivers select or are assigned routes for the upcoming scheduling period. Generally, routes are picked on the basis of seniority. At the beginning of the process, the most senior driver selects one route first. Then the second-most senior driver selects one route, and so on. After all drivers have selected one route, the cycle begins again with the most senior driver selecting a second route. When no driver volunteers for a route, the route is assigned to the driver with the lowest seniority. This procedure continues until all routes have been either selected or assigned. However, consistent with departmental policy, it had been Defendant Magnell's practice at the beginning of the meeting to ask for volunteers to drive the two late-night Saturday and Sunday routes (the two most unpopular routes), as well as the other weekend routes. When no driver volunteered for one of these routes, the route was assigned to the driver with the lowest seniority. However, once a driver volunteered for one of these late-night or regular weekend routes at the beginning of the run pick meeting, the route was assigned to the volunteer and could not be selected by a higher seniority driver through the selection process later on in the meeting.

The September 29, 1992 run pick meeting was conducted as described above. When Defendant Magnell asked for volunteers to drive the late-night weekend routes, Benjamin Allred, a white male bus driver with lower seniority than Plaintiff, volunteered to drive the late-night Sunday route called the "P" route. The other late-night weekend routes were volunteered for also, but by drivers other than Allred or Plaintiff. when Defendant Magnell asked for volunteers to drive the regular weekend routes, Plaintiff volunteered to drive on both Saturday and Sunday. After these initial assignments, the meeting progressed to the seniority-based selection, Plaintiff selected the late-night Sunday route for which Allred had previously volunteered. Defendant Magnell denied Plaintiff this selection because the route had already been assigned to Allred at the beginning of the meeting when he volunteered for the route. Plaintiff filed a grievance with the town in regard to her being denied this bus route but this grievance was unsuccessful. On February 1, 1993, Plaintiff filed a charge with the EEOC in regard to this alleged discrimination and subsequently received a right-to-sue letter on this charge on October 14, 1993.

F. Denial of Access to Grievance Procedures

Plaintiff alleges that she has been discriminated against by Defendant Town of Chapel Hill, through its town manager, Calvin Horton, by being denied access to the final step of the town's grievance procedure in regard to her grievances concerning employment benefits and the administration of the September 29, 1992 bus run pick. Defendant Town of Chapel Hill has instituted a four-step grievance procedure to help resolve any problems that might arise out

its relationships with its employees. Step one of the procedure requires the employee to file a written grievance and the employee's supervisor to thoroughly investigate the matter and render a written decision. If the employee is not satisfied with the decision in step one, step two allows the employee to file an appeal with the head of their department who, after meeting with the employee to fully discuss the grievance, renders a written decision. If the employee is not satisfied with the decision in step two, step three allows the employee to file an appeal with the town manager who may, in his discretion, either render a decision himself or refer the grievance to the personnel appeals committee. If the town manager elects to refer the grievance to the personnel appeals committee in step three, the decision of the committee is final and unappeasable. If the town manager elects to hear the grievance himself and employee is not satisfied with his decision, the employee may usually appeal the grievance to the personnel appeals committee for a final, unappeasable decision. However, grievances challenging town or departmental policies themselves and grievances alleging improper position classification or pay ranges may not be appealed to the personnel appeals committee and the step three decision of the town manager is final and unappeasable.

Plaintiff alleges that she was not allowed a step-four appeal to the personnel appeals committee in regard to her grievances over her employment benefits and the administration of the September 29, 1992 bus run pick. Horton, the town manager of Chapel Hill, states that when he received Plaintiff's appeals at step three of the procedure, he requested the opinion of Ralph Karpinos, town attorney for Defendant Town of Chapel Hill, as to whether Plaintiff's grievance should be interpreted as challenging town or departmental policies themselves. It was the opinion of Karpinos that the grievances did challenge town or departmental policies themselves and were therefore not appealable to the personnel appeals committee. Plaintiff offers no evidence concerning this allegation of discrimination. Plaintiff did not file a grievance over this alleged discrimination, not has she filed a charge with the EEOC in regard to this allegation of discrimination.

DISCUSSION

Summary judgment must be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c) The moving party bears the burden of persuasion on the relevant issues. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party may survive a motion for summary judgment by producing "evidence from which a jury might return a verdict in his favor, "Anderson v.

Liberty Lobby, Inc., 477 U.S. 242, 257 (1986), and when the motion is supported by affidavits the non-moving party must set forth specific facts showing thatthere is a genuine issue for trial. Fed. R. Civ. P. 56 (e). In considering the evidence, all reasonable inferences are to be drawn in favor of the non-moving party. Anderson, 477 U.S. at 255.

Plaintiff has brought claims under both 42 U.S.C. 1983 and Title VII against Defendants. These claims are discussed separately below.

I. Plaintiff's Claims Under 42 U.S.C. 1983

A. Magnell's and Godding's Individual Liability

Plaintiff has sued Defendants Godding and Magnell, in their individual capacity, under 42 U.S.C. 1983 for alleged racial discrimination. Cases of racial discrimination brought pursuant to 42 U.S.C. 1983 require proof of intentional discrimination. See Washington v. Davis, 426 U.S. 229 (1976). Plaintiff has failed to present any evidence whatsoever of discrimination in this case. Furthermore, Plaintiff has offered no evidence at all in regard to the funeral absences, personal leave, merit increase, employment benefits, and denial of access to grievance procedures which form the basis of five of her six claims of discrimination. The only evidence regarding these five claims has been submitted by Defendants. This evidence indicates the following:

1. In regard to the funeral absences, Plaintiff was charged with the three unexcused absences because she did not obtain prior approval to attend the funerals from Defendant Magnell. While one of these absences were later excused in the grievance process, Magnell's initial designation of all of Plaintiff's funeral absences as unexcused was in accordance with department and town personnel policy in place at the time. There is no evidence to indicate that Plaintiff was treated differently from any other employees or otherwise discriminated against because of her race in regard to Plaintiff's funeral absences.

2. In regard to Plaintiff's personal leave, because Plaintiff failed to report to work as assigned on fifteen separate occasions, Plaintiff was charged with fifteen unexcused absences by her immediate supervisor at the time, Mona Moore, who is not a defendant in this case. There is no evidence to indicate that Plaintiff was treated differently from any other employees or otherwise discriminated against because of her race in regard to her personal leave absences.

3. In regard to the merit increase, because Plaintiff was evaluated as an "excellent" employee she received a 1% merit increase in pay. Plaintiff did not receive a 1.5% merit increase because she did not receive the superior evaluation of "outstanding." There is no evidence to indicate that Plaintiff was treated differently from any other employees in the process of evaluation and allocation of merit increases or otherwise discriminated against because of her race in regard to the merit increase.

4. In regard to Plaintiff's employment benefits, Plaintiff did not receive full-time benefits because she did not work an average of 37.5 hours per week in 1992 in order to be classified as a full-time employee and to receive full-time employment benefits under the Town of Chapel Hill's pay and personnel ordinances. There is no evidence to indicate that Plaintiff was treated differently from any other employees or otherwise discriminated against because of her race in regard to the calculation of her hours or the allocation of employment benefits.

5. In regard to the denial of access to Chapel Hill's grievance procedures, Plaintiff was denied access to step four of the grievance procedure in regard to her grievances over bus run picks and employment benefits because her grievances were interpreted as challenging town or departmental policies themselves. Under Chapel Hill's grievance procedure, grievances challenging town or departmental policies themselves may not be appealed to step four of the grievance process. There is no evidence that Plaintiff was treated differently from any other employees or otherwise discriminated against because of her race in regard to the denial of access to the town's grievance procedures.

Because there is no evidence to indicate that Plaintiff was discriminated against because of her race in regard to funeral absences, personal leave, merit increases, employment benefits, or denial of access to grievance procedures, these claims, brought under 42 U.S.C. 1983 against Defendants Magnell and Godding in their individual capacity, will be dismissed with prejudice.

Plaintiff also alleges that she was discriminated against because of her race during the September 29, 1992, run pick in that a white male bus driver with less seniority than Plaintiff received a bus route to which Plaintiff was entitled.[3] Plaintiff has failed to present any direct evidence of discrimination in regard to this claim. However, Plaintiff may attempt to establish discrimination by utilizing the scheme of proof set forth in cases such as McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and St. Mary's Honor Ctr. v. Hicks, 113 S. Ct. 2742 (1993). Mullen v. Princess Anne Volunteer Fire Company, 853 F.2d 1130, 1136 (4th Cir. 1988) (holding the McDonnell Douglas standard applicable to cases of discrimination under 42 U.S.C. 1983). Under these cases, which set

forth the allocation of burdens and order of presentation of proof in a case alleging race discrimination, Plaintiff must first establish a prima facie case of racial discrimination. Burdine, 450 U.S. at 252-53. In this case, Plaintiff could establish a prima facie case of racial discrimination in regard to the September 29, 1992. run pick by showing (1) that she is black; (2) that she requested the late-night Sunday bus route and was qualified to drive this route; (3) she was rejected: and (4) that the position was filled by a white applicant. Carter v. Ball, 33 F.3d 450, 458 (4th Cir. 1994) (citing Patterson v. McLean Credit Union, 491 U.S. 164. 186-87 (1989); Blue v. United States Dep't of the Army, 914 f.2d 525, 537 (4th Cir. 1990), cert. denied, 499 U.S. 959 (1991). Plaintiff offers no evidence to indicate that she was qualified to drive the late-night Sunday bus route. However, Defendants have not contested Plaintiff's qualifications and, because Plaintiff had been assigned to drive other, presumably similar, bus routes for the Town of Chapel Hill, this court assumes that Plaintiff was qualified to drive this route. Nevertheless, this court finds that Plaintiff has failed to establish a prima facie case of racial discrimination. One requirement of a prima facie case is that a plaintiff apply for and be denied an available position. Patterson, 491 U.S. at 186-87. The evidence indicates that Plaintiff did not apply for an available position. It is undisputed that the late-night Sunday bus route had already been assigned to Allred when Plaintiff attempted to select the route in the second cycle of the seniority-based selection process. The fact that only a brief period of time elapsed at the September 29, 1992 meeting between the time Allred volunteered for and was assigned the position, and the time Plaintiff attempted to select and was denied the position does not save Plaintiff's prima facie case. Plaintiff simply failed to apply for the position when it was available and, as a result, is unable to establish a prima facie case of racial discrimination under 42 U.S.C. 1983. Defendants' motion for summary judgment must therefore be granted as to this claim.

Even if the court were to find that Plaintiff was able to establish a prima facie case of racial discrimination in regard to the September 29, 1992 bus run pick. Plaintiff would not be able to survive Defendants' motion for summary judgment. Once a plaintiff establishes a prima facie case of discrimination, the defendant must carry the burden of producing evidence that the adverse employment action was taken "for a legitimate, nondiscriminatory reason." Burdine, 450 U.S. at 254. In order

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[3]Plaintiff does not argue that the September 29, 1992 run pick procedure deviated from the normal procedure used to conduct run picks, and there is no evidence to indicate that this run pick was not conducted pursuant to established procedure.

to do this, "'[t]he defendant must clearly set forth, through the introduction of admissible evidence,' reasons for its actions which, if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment action." St. Mary's, 113 S. Ct. at 2747 (quoting Burdine, 450 U.S. at 255). Even if Plaintiff could establish a prima facie case, Defendants would carry their burden of producing evidence that Plaintiff was denied the late-night Sunday bus route for a legitimate, non-discriminatory reason. The evidence shows that Plaintiff was denied the late-night Sunday bus route in a run pick administered pursuant to an established and non-discriminatory departmental policy which required that late-night weekend bus routes be awarded to drivers who volunteered for the routes at the beginning of the run pick and not to drivers who selected the route in a later round of the run pick based upon their seniority. Plaintiff simply failed to volunteer for the route at the beginning of the run pick, as required by established and non-discriminatory departmental policy, and the route was not awarded to her for this reason.

When a defendant has succeeded in carrying its burden of production, the McDonnell Douglas presumption of discrimination disappears and the plaintiff must prove that the defendant intentionally engaged in racial discrimination. U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 715 (1983). A plaintiff may prove intentional discrimination by showing both that the legitimate reason proffered by the employer for the adverse employment decision is false and that discrimination is the real reason. St. Mary's, 113 S. Ct. at 2752. However, when a case is postured at the summary judgment stage, a showing by the plaintiff that the defendant's proffered reasons for the adverse employment decision are false will defeat a defendant's motion for summary judgment and permit the base to go forward. Id. at 2749. Plaintiff has offered no evidence to indicate that the September 29, 1992, run pick was not administered according to departmental policy or that the departmental policy pursuant to which the run pick was administered was discriminatory. To the contrary, Plaintiff's own evidence indicates that the run pick was administered properly and in accordance with non-discriminatory departmental policy and that Plaintiff, while volunteering for the regular Saturday and Sunday routes, failed to volunteer for the late-night Sunday route ultimately assigned to Allred. The court therefore finds that Plaintiff has failed to raise a genuine issue of fact as to whether the reasons proffered by Defendants for the adverse employment decision were false. For these reasons, summary judgment must therefore be entered for defendants Magnell and Godding as to Plaintiff's Section 1983 claims against them in their individual capacity regarding the September 29, 1992, run pick.

B. Town of Chapel Hill's Liability under 42 U.S.C. 1983

Plaintiff has sued the Town of Chapel Hill and Defendants Magnell and Godding, in their official capacity, for alleged racial discrimination against Plaintiff. A suit against municipal officers in their official capacity is a suit against the municipality itself. See Spell v. McDaniel, 824 F.2d 1380, 1385 (4th Cir. 1987), cert. denied sub nom. City of Fayetteville v. Spell, 484 U.S. 1027 (1988). "[A] municipality cannot be held liable under 1983 on a respondeat superior theory." Monell v. Department of Social Servs., 436 U.S. 658, 691 (1978). A municipality is liable for the constitutional violations of its employees under 1983 when its employees violate the constitutional rights of the plaintiff under "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Id. at 690. Furthermore, a municipality may be liable for constitutional violations of its officers acting pursuant to practices sufficiently known and approved to institute a custom. Pembaur v. City of Cincinnati, 475 U.S. 469, 481-84 & n.10 (1986); City of Oklahoma City v. Tuttle, 471 U.S. 808, 820-24 (1985). Finally, a municipality may be held liable under 1983 for failure to train its officers adequately if such failure amounts to "deliberate indifference to the rights of persons with whom the [officers] come into contact." Canton v. Harris, 489 U.S. 378, 388 (1989).

Plaintiff's claims against Defendant Town of Chapel Hill and Defendants Magnell and Godding in their official capacities must fail. First of all, as discussed above in regard to Plaintiff's claims against Defendants Magnell and Godding in their individual capacities, Plaintiff is unable to show that any employees of the Town of Chapel Hill have violated her constitutional rights, her claims against the Town of Chapel Hill would fail. Plaintiff cites no indifference on the part of the Town of Chapel Hill as to the supervision and training of its employees, no policy statement, or no well-settled custom pursuant to which her rights would have been allegedly violated. Summary judgment must therefore be granted for Defendants on Plaintiff's claims against Defendants Magnell and Godding in their official capacity and Defendant Town of Chapel Hill under 42 U.S.C. 1983.

II. Plaintiff's Claims under Title VII

A. Funeral Absences, Employment Benefits, and Denial of Access to Grievance Procedures

In addition to seeking to recover under 42 U.S.C.A. 1983, Plaintiff also seeks to recover for alleged racial discrimination under Title VII. There is no evidence to indicate that Plaintiff has filed a charge of discrimination with the EEOC in regard to her claims under Title VII regarding

her funeral absences, employment benefits, and denial of access to grievance procedures. Because Plaintiff has failed to file a charge with the EEOC in regard to these claims, she has not complied with the statutory prerequisites to filing an action in federal court and this court is without jurisdiction to hear these claims. Davis v. North Carolina Dep't of Corrections, No. CA-93-144-5-D, 1995 WL 82860, at *5 (4th Cir. Mar. 2, 1995) (citing Lowe v. City of Monrovia, 775 F.2d 998, 1003 (9th Cir. 1985)). These claims will therefore be dismissed.

Even if this court had jurisdiction of these claims, the analysis in regard to Plaintiff's Section 1983 claims over her funeral absences employment benefits, and denial of access to grievance procedures would govern these Title VII claims.[4] Because Plaintiff has failed to produce evidence sufficient to support these claims, they would be dismissed with prejudice.

B. September 29, 1992, Bus Run Pick

As to Plaintiff's Title VII claim regarding the September 29, 1992, bus run pick, Plaintiff filed a charge with the EEOC and received a right-to-sue letter on this claim in October of 1993. This court therefore has jurisdiction to hear this claim. In regard to Plaintiff's Title VII claim against Defendants Magnell and Godding in their individual capacity, the Fourth Circuit has indicated, in a case under the ADEA, that supervisory employees may not be held individually liable under Title VII. See Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510-11 (4th Cir.), cert. denied, 115 S. Ct. 666 (1994). This claim against Defendants Magnell and Godding in their individual capacity, must therefore be dismissed.[5]

The analysis of Defendants' Section 1983 individual liability regarding the bus run pick also governs Plaintiff's Title VII claim against Defendant Town of Chapel Hill and Defendants Magnell and Godding in their official capacity. Holder v. City of Raleigh, 867 F.2d 823, 828 (4th Cir. 1989). As set forth above in regard to Plaintiff's claim under Section 1983,[6] Plaintiff has failed to produce evidence concerning the bus run pick to support this claim, and summary judgment will be granted for Defendants on Plaintiff's Title VII claims against Defendant Town of Chapel Hill and Defendants Magnell and Godding in their official capacity.

C. Personal Leave and Merit Increase

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[4]See supra section I.A., pp. 12-15.

Plaintiff's claims under Title VII regarding her personal leave and a merit increase must be dismissed because Plaintiff has not requested and, indeed, has not received, a right-to-sue letter.

42 U.S.C.A. 2000e-5(f) (1) provides that a civil action may be brought in federal court within ninety (90) days after a right-to-sue notice is given to the Plaintiff. 42 U.S.C.A. 2000e-5(f) (1) also specifies that a right-to-sue letter shall be given to a plaintiff if within 180 days from the filing of the charge of discrimination the EEOC or the Attorney General has not filed a civil action in the case, or the EEOC has not entered into a conciliation agreement. 42 U.S.C.A. 2000e-5(f) (1) (West 1994). Accordingly, the Fourth Circuit has held that the EEOC's or the Attorney General's

> failure actually to issue the notice cannot defeat the complainant's statutory right to sue in the district court, for '[a] Title VII complainant is not charged with the commission's failure to perform its statutory duties.' ...[I]t is entitlement to a 'right to sue' notice, rather than its actual issuance or receipt, which is a prerequisite to the jurisdiction of the federal courts under 20003-5(f) (1).

Perdue v. Roy Stone Transfer Corp., 690 F.2d 1091, 1093 (4th Cir. 1982) (quoting Russell v. American Tobacco Co., 528 F.2d 357, 365 (4th Cir. 1975), cert. denied, 425 U.S. 935 (1976)) (footnote omitted). See also Davis 1995 WL 82860 at *5 (holding "receipt of, or at least entitlement to, a right-to-sue letter is a jurisdictional prerequisite" to an action in federal court).

Plaintiff filed her complaint in this action on January 13, 1994. Eleven days later, on January 24, 1994, Plaintiff filed a charge with the EEOC concerning the denial of personal leave and a merit increase. Because 180 days have passed since Plaintiff filed her charge with the EEOC, and no action has been taken by the EEOC or the Attorney General, Plaintiff is entitled

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[5]If, contrary to Birkbeck, Defendants Magnell and Godding could be held individually liable under Title VII, the analysis of their Section 1983 individual liability regarding the run pick would also govern this Title VII claim against Defendants Magnell and Godding, individually. Under that analysis, this claim would be dismissed. See supra section I.A., pp. 15-19.

[6]See supra section I.A., pp. 15-19.

to a right-to-sue notice and this court has jurisdiction of these Title VII claims pursuant to the holding of the Fourth Circuit in Perdue and Davis.[7] Perdue, 690 F.2d at 1093; Davis, 1995 WL 82860 at *5.

Although this court has jurisdiction over these particular claims, there is no evidence to indicate that Plaintiff has either requested or received a right-to-sue notice regarding this charge. In a case such as this one, where the Plaintiff has not received, and has not even requested, a right-to-sue notice, Plaintiff has failed to satisfy a condition precedent to the institution of a suit in federal court.[8] Allowing a plaintiff to bring an action in federal court before a right-to-sue notice is received or requested could impede the EEOC's function of investigating the charge and attempting conciliation. Such a practice would also likely result in the waste of precious judicial and administrative resources due to the simultaneous exercise of jurisdiction over the plaintiff's case by the court and the EEOC.

42 U.S.C.A. 2000e-5(f)(1) provides that a civil action may be brought in federal court within ninety (90) days after a right-to-sue notice is given to the Plaintiff. 29 C.F.R. 1601.28 provides a procedure whereby a person who has filed a charge of discrimination may request a right-to-sue notice, and, upon such request, the EEOC or the Attorney General is required to promptly issue the notice after the expiration of 180 days from the date that the charge is filed. 29 C.F.R. 1601.28 (1994). As to Plaintiff's Title VII claims regarding her personal leave and merit increase, because she has failed to request such a notice, she has failed to satisfy a condition precedent to the institution of this suit.[9] These claims will therefore be dismissed without prejudice. Even if Plaintiff had

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[7]The fact that Plaintiff was not entitled to a right-to-sue notice when she filed this action does not deprive this court of jurisdiction. Satisfaction of a jurisdictional prerequisite, such as the requirement that a plaintiff be entitled to a right-to-sue notice, after a case is filed, cures the jurisdictional defect. Henderson v. Eastern Freight Ways, Inc., 460 F.2d 258, 260 (4th Cir. 1972), cert. denied, 410 U.S. 912 (1973).

[8]See generally Harris v. Amoco Prod. Co., 768 F.2d 669, 680 (5th Cir. 1985) (stating that "while the failure to comply with a condition precedent usually means that a plaintiff cannot bring suit, it does not mean that the district court lacks subject matter jurisdiction") (citations omitted), cert. denied sub nom. Amoco Prod. Co. v. EEOC, 475 U.S. 1011 (1986).

satisfied this condition precedent, the analysis in regard to Plaintiff's Section 1983 claims over her personal leave and merit increase would govern these Title VII claims.[10] Because Plaintiff has failed to produce evidence sufficient to support these claims, they would be dismissed with prejudice.

CONCLUSION

Plaintiff has failed to establish claims under 42 U.S.C.A. 1983 in regard to her personal leave, funeral absences, merit increase, employment benefits, denial of access to grievance procedures, and the September 29, 1992, bus run pick. Summary judgment will therefore be granted for Defendants on all of Plaintiff's claims brought under 42 U.S.C.A. 1983 and these claims will be dismissed with prejudice.

Plaintiff has failed to establish a claim under Title VII in regard to the September 29, 1992, bus run pick. Summary judgment will therefore be granted for Defendants on this claim and this claim will be dismissed with prejudice.

This court is without jurisdiction to adjudicate Plaintiff's Title VII claims based on her funeral absences, employment benefits, and denial of access to grievance procedures because she has failed to file a charge with the EEOC regarding these allegations of discrimination. These claims will therefore be dismissed without prejudice.

Because Plaintiff has not requested a right-to-sue notice, Plaintiff has failed to satisfy a condition precedent to the

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[9]The requirement that a plaintiff request a right-to-sue notice, unlike a plaintiff's entitlement to such a notice, is merely a condition precedent to the institution of a suit in federal court and not a jurisdictional prerequisite. As such, this requirement may be subject to equitable modification under proper circumstances. There is no evidence to indicate that Plaintiff should be entitled to an equitable modification in this case.

[10]See supra section I.A., pp. 13-15.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
1:94CV0012

E. VICTORIA HOWARD LARRY HOWARD, Plaintiff,	) RESPONSE TO) DEFENDANTS) SUMMARY) JUDGMENT) MOTION
V.	
TOWN OF CHAPEL HILL; ROBERT GOODING, DIRECTOR; LOIS J. MAGNELL, TRANSPORTATION DEPARTMENT OPERATION SUPERINTENDENT; CAL HORTON, TOWN MANAGER, Defendants,	) **FILED** FEB 28,) 1995 IN THIS) OFFICE CLERK,) US DISTRICT) COURT) GREENSBORO,) NC

STATEMENT OF THE CASE

Plaintiff, E. Victoria Howard filed a civil rights action alleging violations of 42 U.S.C. 1983, 2000e, et. seq. against the town of Chapel Hill and two of its officers. Among other things plaintiff asserted that she was denied a run pick because of her race.

STATEMENT OF FACTS

Plaintiff is and was at all material times a bus driver for the Town's transportation department. In that position, plaintiff always performed satisfactory and outstanding work.

Over a period of time plaintiff filed grievances and/or contested issues dealing with her contentions of unfairness as it relates to personal leave, funeral leave, merit increases and the treatment of black employees differently from white employees.

Defendant, on September 29, 1992 conducted a run pick (selections of runs) for part-time Bus Drivers. Selection process is done on a rotation bases starting from highest seniority driver to lowest seniority driver.

On September 29, 1992 a whit male bus driver with less seniority was given the run that was selected by plaintiff who had a higher seniority. Plaintiffs' name was removed after plaintiff had made her selection.

Plaintiff filed a timely charge of race discrimination with the Equal Employment Opportunity Commission and brought this action within ninety (90) days of her receipt of a right to sue.

ARGUMENT

Cases involving constitutional and civil rights issues are frequently unsuitable for summary judgment because it is felt that a fuller record is necessary to properly decide the issues in the case. Askew v. Hargrove, 1971, 91s. ct. 856, 401 U.S. 476, 28 L. education. 2d 196, Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d # 2732.2.

In the instant case plaintiff has submitted affidavits presenting a different account of the same event which is the basis of the complaint.

Affidavits by Linda Ray, Scottie Borders and Anita Hackney support plaintiffs' position that after she made her selection based on seniority, her name was removed in favor of a white employee with less seniority. Exhibit "A" "B" & "C". The background as noted in defendants Statement of Facts indicate that Howard has files a series of grievances concerning action taken by Magnell and Moore. Howard made use of the grievance procedure for several employment decisions that allegedly had an adverse impact on her. Of course, plaintiff had a right to file these grievances, pursuant to the existing procedures. The factual determination in the instant case is for the jury.

Likewise the affidavits rebuts defendants professed innocent motives and thereby present triable issues of fact. Rodriquez v. Board of Education. of Eastchester Union Free School Dist. C.A. 2d. 1980, 620 F. 2d 362.

Summary judgment is usually inappropriate where questions of intent or motive are present, and on this record the court cannot conclude that the defendants did not intend to retaliate against plaintiff for filing grievances. Ross, 759 F.2d at 364; Charbonnages de France v. Smith, 597 F.2d 406, 414 (4th Cir. 1979). The ultimate question of intent should be left for a later date.

Plaintiff has no addressed several of the issues raised by defendant. Plaintiff is proceeding on the Title VII claim as filed with the Equal Employment Opportunity Commission as set forth in her complaint.

CONCLUSION

For the forgoing reasons, defendants motion for summary judgment should be denied.

This the 28th day of February, 1995.

C1

Romallus O. Murphy
Romallus O. Murphy
NCSB# 3177
P.O. Box 20383
Greensboro, NC 27420-0383
(919) 274-3785

C2

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document(s) was served on parties to this action by hand delivery addressed as follows:

Ms. Patricia L. Holland
Cranfill, Sumner & Hartzog, L.L.P.
P.O. Box 27808
Raleigh, NC 27611-7808

This the 28th day of February, 1995.

Romallus O. Murphy
Romallus O. Murphy
NC State Bar No. 3177
P.O. Box 30383
Greensboro, NC 27420-0383
(919) 274-3785

ATTORNEY FOR

PLAINTIFF

IN THE UNITED STATES DISTRICE COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
1:94CV0012

E. VICTORIA HOWARD LARRY HOWARD, Plaintiff,	))) RESPONSE) TO MOTION TO) DISMISS) AMENDED) COMPLAINT
V.	)
TOWN OF CHAPEL HILL; ROBERT GOODING, DIRECTOR; LOIS J. MAGNELL, TRANSPORTATION DEPARTMENT OPERATION SUPERINTENDENT; CAL HORTON, TOWN MANAGER,	)
Defendants,	) FILED) JAN 10, 1995) IN THIS OFFICE) CLERK, US) DISTRICT) COURT) GREENSBORO,) NC

The plaintiff shows unto the Court the plaintiff elects to stand on the allegations of her original complaint and hereby withdraws the Amended Complaint filed August 25, 1994.

Wherefore, Plaintiff requests that the Court make whatever final disposition of the Amended Complaint as may appear to be appropriate.

This the 10th day of January, 1995.

Romallus O. Murphy
ROMALLUS O. MURPHY
NCSB# 3177
P.O. BOX 20383
GREENSBORO, NC 27420-0383
(919) 274-3785

APPENDIX D

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing documents was served on parties to this action by depositing copies of the same in the United States Mail, postage prepaid, and addressed as follows.

Ms. Patricia L. Holland
Cranfill, Sumner & Hartzog, L.L.P.
P.O. Box 27808
Raleigh, NC 27611-7808

ATTORNEY FOR DEFENDANT

This the 10 day of January, 1995.

Romallus O. Murphy
Romallus O. Murphy
NC State Bar No. 3177
P.O. Box 30383
Greensboro, NC 27420-0383
(919) 274-3785

ATTORNEY FOR PLAINTIFF

D1

18BA APPEAL
CLOSED

U.S. District Court
Middle District of North Carolina (Durham)

CIVIL DOCKET FOR CASE #: 94-CV-12

HOWARD, et al v. CHAPEL HILL, TOWN OF, et al
Assigned to: Judge James A. Beaty, Jr.
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 01/13/94
Jury demand: Both
Nature of Suit: 442
Jurisdiction: Federal Question

Cause: 42:2000 Job Discrimination (Race)

E. VICTORIA HOWARD
plaintiff

ROMALLUS O. MURPHY
[COR LD NTC]
POB 20383
GREENSBORO, NC 27420
910-274-3785

CURTIS JEROME RODGERS
[COR LD NTC]
POB 904
PLYMOUTH, NC 27962
919-793-4818

LARRY HOWARD
plaintiff

CURTIS JEROME RODGERS
(See above)
[COR LD NTC]

v.

CHAPEL HILL, TOWN OF
defendant

PATRICIA L. HOLLAND
[COR LD NTC]
CRANFILL, SUMNER & HARTZOG
POB 27808
RALEIGH, NC 27611-7808
919-828-5100

ROBERT GODDING, DIRECTOR
defendant

PATRICIA L. HOLLAND
(See above)
[COR LD NTC]

LOIS J. MAGNELL,
TRANSPORTATION DEPARTMENT
OPERATIONS SUPERINTENDENT
defendant

PATRICIA L. HOLLAND
(See above)
[COR LD NTC]

APPENDIX E

CAL HORTON, TOWN MANAGER
defendant

E1

Proceedings include all events. 18BA APPEAL
1:94cv12 HOWARD, et al v. CHAPEL HILL, TOWN OF, et al CLOSED

1/13/94	1	COMPLAINT Filing Fee $ 120.00 Receipt # 41025; jury demand (sjm) [Entry date 01/18/94]
1/13/94	2	SUMMONS issued for CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL (sjm) [Entry date 01/18/94]
1/13/94	--	Notice of Right to Consent 28 USC 636 (c) (2) (sjm) [Entry date 01/18/94]
1/25/94	3	AFFIDAVIT OF SERVICE as to M. Webb accepting service for CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL by cert mail on 1/20/94 Answer due on 2/9/94 for LOIS J. MAGNELL, for ROBERT GODDING, for CHAPEL HILL, TOWN OF (ay) [Entry date 01/27/94]
2/9/94	4	ANSWER to Complaint by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL (Attorney PATRICIA L. HOLLAND).; jury demand (ww) [Entry date 02/14/94]
2/9/94	--	CASE AT ISSUE (ww) [Entry date 02/14/94]
2/16/94	5	NOTICE of Hearing: setting Initial Pretrial Conference for 9:30 3/28/94 in G-1. (gs)
3/28/94	--	Initial Pretrial Conference Held before MJ Sharp in Gsbo. CM Track is Standard. DE 8/28/94. No mediation. Motions for leave to amend due 60d. ETT 2-3d. JURY. Plaintiff not represented at this hearing, but pro se plaintiff did appear after hearing was held. Court will enter order setting ddls in case - if pltf objects, can request rehearing at her own expense. (sf)
3/30/94	6	Initial Pretrial Order setting Discovery cutoff 7/28/94 ; Notice of Intent to file Dsp.Motions due by 8/7/94 ; Std. case mgmt. track. IT IS ORDERED that pltf. and dft. will be allowed until 5/30/94 to join add'l ptys or amend pldgs. JURY TRIAL; IT IS ORDERED that the case be placed on a jury calender for trial. (signed by Judge William L. Osteen Sr.). ETT 2-3d Ccs. dist. (ww)
5/6/94	7	NOTICE of Hearing: setting Jury Trial for 9:30 4/3/95 (jm)
5/27/94	8	AMENDED COMPLAINT by E. VICTORIA HOWARD amending [1-1] complaint; jury demand (ww) [Entry date 06/02/94]
7/25/94	9	ORDER (DEFICIENCY) - lacks certificate of service - has until 8/10/94 to correct. (signed by Mag/Judge P. T. Sharp) (dm)
8/25/94	10	MOTION by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, CAL HORTON to Dismiss amended complaint pursuant to Rule 15. (dm)

Proceedings include all events. 18BA APPEAL
1:94cv12 HOWARD, et al v. CHAPEL HILL, TOWN OF, et al CLOSED

8/25/94	11	MEMORANDUM OF LAW by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, CAL HORTON in support of [10-1] motion to Dismiss amended complaint by CAL HORTON, LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF (dm)
8/25/94	12	MOTION by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, CAL HORTON to Extend Time to file dispositive motion (dm)
8/25/94	13	MOTION by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, CAL HORTON to Extend Time in which to file notice of intent to file dispositive motion (dm)
11/10/94	14	NOTICE of Hearing: setting Status Conference for 9:30 12/1/94 (jm)
12/1/94	--	Status Conference held before Judge William L. Osteen Sr. G'boro. Beck Rptr. Pltf may employ new counsel w/i 20 days, at that time a response will be due to deft's motion to dismiss. Pltf's new counsel will have also determined if serivce has been met on the amended complaint. Deft will then have 30 days to respond to any pldgs the pltf has filed and to submit other dispositive motions if necessary. (jm) [Edit date 12/02/94]
12/1/94	--	Deadline updated; Response to Motion set for 12/21/94 for [10-1] motion to Dismiss amended complaint (jm)
12/1/94	--	Deadline updated; Dispositive motions due 1/21/95 (jm) [Entry date 12/02/94]
12/7/94	15	ORDER that pltfs. have until 12/21/94 to retain cnsl. if they wish; to determine if svc. has been made on the Amended Complaint, and to file pldgs., etc.. IT IS FURTHER ORDERED that dfts. have until 1/23/95, to repsond to any pldgs. filed and disp. motions (signed by Judge William L. Osteen Sr.) Ccs. dist. (Copy sent to the Howards at their home address). (ww) [Edit date 12/07/94]
12/7/94	16	ORDER, that atty Curtis Rodgers shall appear and show cause, if any, why he should not be adjudged in civil contempt of this Ct. This matter is set for hearing on 1/20/95, at 2:00 p.m. in W-S. The Clerk is directed to mail this order to Atty Rodgers via return receipt requested setting Show Cause Hearing for 1/20/95 (signed by Judge William L. Osteen Sr.) Ccs. dist. (Copy sent to the Howards at their home address). (ww) [Edit date 12/07/94]
12/21/94	17	NOTICE of Attorney Appearance for E. VICTORIA HOWARD by ROMALLUS O. MURPHY (ww) [Entry date 12/29/94]

12/21/94	18	MOTION by E. VICTORIA HOWARD to Extend Time 20 days to determine if svc. has been made on the Amended Complaint and to file any pldgs. responsive or otherwise, they deem necessary. (ww) [Entry date 12/29/94]
1/9/95	19	ORDER granting [18-1] motion to Extend Time 20 days to determine if svc. has been made on the Amended Complaint and to file any pldgs. responsive or otherwise, they deem necessary. (signed by Judge William L. Osteen Sr.) Ccs. dist. (ww)
1/10/95	20	RESPONSE by E. VICTORIA HOWARD to [10-1] motion to Dismiss amended complaint by CAL HORTON, LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF (ww) [Entry date 01/12/95]
1/20/95	--	Show Cause Hearing held before Judge William L. Osteen Sr., W-S. Atty Rodgers failed to appear. Court orders Mr. Rodgers arrested & brought before the Court.
1/23/95	--	Minute entry:, Ex Parte Order of Clerk, "In view of inclement weather (snow showers) one day extension granted to Atty. Ray Davis of Cranfill, Sumner & Hartzog, to respond to any pleadings filed and dispositive motions." Dispositive motions due 1/24/95 (gs)
1/24/95	21	MOTION FOR SUMMARY JUDGMENT by defendant CHAPEL HILL, TOWN OF, defendant ROBERT GODDING, defendant LOIS J. MAGNELL (kd)
1/24/95	22	MEMORANDUM by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL in support of [21-1] motion FOR SUMMARY JUDGMENT by LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF (kd)
1/24/95	23	APPENDIX by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, CAL HORTON and others in support of [22-1] support memorandum by LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF, [21-1] motion FOR SUMMARY JUDGMENT by LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF. Located in separate expandable folder. (kd) [Edit date 01/25/95]
1/24/95	24	MOTION by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL to Dismiss claims against them pursuant to Rule 12(b)(6) of FRCvP and Fourth Defense listed in Def.'s Answer of 2/8/94 (kd) [Edit date 01/25/95]
1/24/95	25	MEMORANDUM by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL in support of [24-1] motion to Dismiss by LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF (kd)

1/24/95	26	APPENDIX by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, CAL HORTON and others in support of [25-1] support memorandum by LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF, [24-1] motion to Dismiss by LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF Located in separate expandable folder. (kd) [Edit date 01/25/95]
2/8/95	--	TRIAL CALENDAR mailed to parties for session beginning 4/3/95 at 9:30 a.m. in GSO (glp)
2/15/95	27	MOTION by E. VICTORIA HOWARD, LARRY HOWARD to Extend Time an add'l 15 days to respond to dft's s.j. motion w/consent. (ww) [Entry date 02/16/95]
2/17/95	28	ORDER granting [27-1] motion to Extend Time to respond to dft's s.j. motion, to and including 2/24/94. No greater extensions can be granted in view of the April trial setting Response to Motion set for 2/24/95 for [21-1] motion FOR SUMMARY JUDGMENT (signed by Mag/Judge P. T. Sharp) Ccs. dist. (ww)
2/24/95	29	MOTION by E. VICTORIA HOWARD to Extend Time an add'l 4 days to and including 2/28/95 to respond to s.j. motion w/out consent. (ww) [Entry date 02/27/95]
2/28/95	30	ORDER, setting a new time and date for matters set out in the Court's 12/7/94 order to show cause (copy attached), and ordering Curtis J. Rodgers, Attorney, to show cause why he should not be adjudged in civil contempt of this Court on 3/27/95. resetting Show Cause Hearing for 11:30 3/27/95 in G-2. US Marshal is directed to make service upon Curtis J. Rodgers. 3 cert. ccs to USM. (signed by Judge William L. Osteen Sr.) (gs) [Entry date 03/01/95]
2/28/95	31	RESPONSE by E. VICTORIA HOWARD to [21-1] motion FOR SUMMARY JUDGMENT by LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF (kd) [Entry date 03/01/95]
3/1/95	--	SERVICE COPY of Show Cause Order & USM-285 delivered to USM for service on C. Rodgers, along with 3 cert. ccs of order for Marshal's use. (gs)
3/1/95	32	ORDER granting [29-1] motion to Extend Time an add'l 4 days to and including 2/28/95 to respond to s.j. motion. NO FURTHER EXTENSIONS WILL BE GRANTED. (signed by Mag/Judge P. T. Sharp) (sf)
3/1/95	33	NOTICE of Hearing: set Settlement Conference for 10:30 3/16/95 before Chief Judge Bullock in GSO. (dm) [Entry date 03/02/95]

Proceedings include all events.
1:94cv12 HOWARD, et al v. CHAPEL HILL, TOWN OF, et al 18BA APPEAL CLOSED

3/8/95	34	AMENDED ORDER TO SHOW CAUSE, amending 2/28/95 order originally setting show cause hrg. for 3/27/95. Matter is now being rescheduled resetting Show Cause Hearing for 4:00 4/17/95 in WS-1 for Curtis J. Rodgers, Atty. to show cause why he should not be adjudged in civil contempt of this Court's 12/7/94 order (copy attached). U.S. Marshal is directed to amke service upon Curtis J. Rodgers. (signed by Judge William L. Osteen Sr.) (gs)
3/10/95	35	REPLY by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, LARRY HOWARD, CAL HORTON to response to [21-1] motion FOR SUMMARY JUDGMENT by LOIS J. MAGNELL, ROBERT GODDING, CHAPEL HILL, TOWN OF (ww)
3/10/95	36	SERVICE RETURN 3/9/95 as to Curtis Rodgers of Amended Order to Show Cause by personal service. (ww) [Entry date 03/14/95] [Edit date 03/14/95]
3/14/95	37	TRIAL BRIEF by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, CAL HORTON (dm) [Entry date 03/15/95]
3/14/95	38	Proposed Jury instructions by CHAPEL HILL, TOWN OF, ROBERT GODDING, LOIS J. MAGNELL, CAL HORTON (dm) [Entry date 03/15/95]
3/15/95	39	MOTION by Romallus O. Murphy for Romallus O. Murphy to Withdraw as Attorney (dm) [Edit date 03/29/95]
3/16/95	--	Settlement Conference held before Chief Jdg Frank W. Bullock Jr. in chambers. (dm)
3/27/95	40	RESPONSE by E. VICTORIA HOWARD to [39-1] motion of Romallus O. Murphy to Withdraw as Attorney for E. VICTORIA HOWARD (ww) [Entry date 03/29/95] [Edit date 03/29/95]
4/5/95	41	MEMORANDUM OPINION that Summary Judgment should be granted as set out. An order and judgment in accordance with this memorandum opinion shall be entered contemporaneously herewith. (signed by Chief Jdg Frank W. Bullock Jr.) (kd)

4/5/95	42	ORDER and JUDGMENT for reasons set forth in MEMORANDUM OPINION. IT IS ORDERED AND ADJUDGED that Defs' motion for summary judgment on Plf's claims under 42 USC Section 1983 is GRANTED and these claims are DISMISSED with prejudice; Defs' motion for summary judgment on Plf's claim under Title VII regarding the 9/29/92 bus run pick is GRANTED and this claim is DISMISSED with prejudice; that Plf's Title VII claims regarding funeral absences, employment benefits, and denial of access to grievance procedures are DISMISSED without prejudice because this court is without jurisdiction as to these claims; that Plf's Title VII claims regarding personal leave and a merit increase are DISMISSED without prejudice because Plf has failed to satisfy a condition precedent to the institution of an action in federal court in regard to these claims. (signed by Chief Jdg Frank W. Bullock Jr.) (kd)
4/5/95	--	CASE CLOSED. Closing Code 7 (kd) [Entry date 04/06/95]
4/17/95	--	Show Cause Hearing held before Judge William L. Osteen Sr., W-S. Julian Ct Rptr. Rodgers failed to appear. Court will issue order for arrest. (jm) [E
5/1/95	43	ORDER that the U.S. Marshal arrest Curtis J. Rodgers and hold Rogers in custody until such time as Rogers can purge himself of the contempt of this court. (signed by Judge William L. Osteen Sr.) (kd)
5/4/95	44	NOTICE OF APPEAL to USCA 4th Circuit by E. VICTORIA HOWARD FILING FEE $ 105.00 RECEIPT # 44420 appealing the final Judgment entered by Judge Bullock on 4/5/95. (ww) [Entry date 05/05/95] [Edit date 05/10/95]
5/10/95	--	Copy of Notice of Appeal and certified copy of docket to USCA: [44-1] appeal by E. VICTORIA HOWARD (ww)
5/10/95	--	Show Cause Hearing held before Judge William L. Osteen Sr., W-S. Snyder Rptr. (jm) [E
5/11/95	45	SERVICE RETURN of Order dated 5/1/95 of U.S. District Court Judge Osteen The order was executed on 5/8/95 by the arrest of Curtis J. Rodgers by Jesse Anderson, SDUSM. (kd)
5/15/95	--	Certified and transmitted Record on Appeal to U.S. Court of Appeals 4th Circuit: [44-1] appeal by E. VICTORIA HOWARD 3 Vols. (ww)
5/17/95	46	USCA's Notice of Docketing Appeal Re: [44-1] appeal USCA Number: 95-1990 (ww)
5/19/95	--	USCA's Notice of Receipt of Record on Appeal Re: [44-1] appeal USCA Number: 95-1990 (ww)

BEST AVAILA

ceedings include all events. 18BA APPEAL CLOSED

cv13 HOWARD, et al v. CHAPEL HILL, TOWN OF, et al

SERVICE RETURN Re: Show Cause Order as to Curtis J. Rodgers, Attny. On 3/7/95 subject found to be a patient at VA Hospital in Durham, NC. Hold per Clerk MDNC Re: service instructions. 5/31/95 instructions were to return unexecuted. (cmh) [Entry date 06/19/95]

/95 47

Volume 4

ment 1 of 4

Volume 5

/95 48 TRANSCRIPT filed of Show Cause Hearing Re Curtis J. Rogers for dates of 5/10/95 (kd) [Entry date 08/24/95]

/11/95 -- Transmitted Supplemental Record on Appeal: [44-1] appeal by E. VICTORIA HOWARD (Supplement #1, Vols. 4,5). (ww)

ABLE COPY

LINDA KAY, being first duly sworn, hereby deposes and says:

1. I reside in Orange County, North Carolina, am over the age of 18, have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit.

2. In September 1992, I was a part-time bus driver for the Town of Chapel Hill's Transportation Department. I have worked for the Town of Chapel Hill's Transportation department for 15 years. As a part-time bus driver, I attended department "Run Pick" in which bus drivers picked their routes for a particular scheduling period on a seniority basis.

3. At the beginning of "all Run picks", I remember that Ms. Magnell, Operating Superintendent demanding for all part-time drivers attention. Ms. Magnell's demand for all part-time drivers attention was threatening. Ms. Magnell occasionally stop speaking until everyone was quiet.

4. In September 1992, Ms. Magnell conducted the part-time "run Pick" the same as usual, by starting with request for drivers who wanted to work a 5 day report. The next procedure would be to inform the part-time drivers who had to work on Saturday or Sundays, then Ms. Magnell would ask if any higher seniority drivers want to work on Saturday or Sunday. Ms. Magnell would inform the less seniority driver, usually the less 2 seniority driver on the rooster, if no higher seniority driver wanted to bid for the Saturday night "U" or the Sunday night "U", the late night weekend reports would be assigned to them. After those announcements are made Ms. Magnell would tell all drivers who had to pick a weekend report or volunteered to work weekends, must pick their weekend report on the third pick. Ms. Magnell would inform the contract drivers if any that they could start their cycle of picking on the third pick.

5. I remember September 1992, just as all other part-time "Run pick", Ms. Magnell requesting for volunteers for the late night Saturday "U" or late night Sunday "U", if no one volunteers, Ms. Magnell assign the late weekend reports to the part-time rooster on their 3rd pick, or reminded the drivers when they approached the tables she was working at. Mr Scottie Borders often would assist Ms. Magnell with the part-time run pick.

6. I have been promised no benefits nor threatened any harm to

provide this affidavit.

L. B. Kay
Linda Kay

Sworn to and Subscribed to before me this 28th day of February 1995

_____
Notary Public

My commission expires 2-03-96

F1

SCOTTIE BORDERS, being first sworn, hereby deposes and says:

1. I reside in Orange County, North Carolina, am over the age of 18, have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit

2. In September 1992, I was a part-time bus driver for the Town of Chapel Hill's Transportation Department. As a part-time bus driver I attended department "Run Picks" and assisted Ms. Magnell on several occasions.

3. In September 1992, at the beginning of the "Run Pick" I remember Ms. Magnell, Superintendent of Operations, demanding all drivers to be quiet and pay attention. Ms. Magnell did not speak again until the transportation garage was quiet. Ms. Magnell started with asking for volunteers for the 5 day reports, then Ms. Magnell informed the part-time drivers who would have to work Saturday or Sunday, based on how many weekend reports she had. Ms. Magnell would then ask any driver with higher seniority if they wanted to work on Saturday or Sunday, Ms. Mary Dexter, Ms. Victoria Howard, and Mr. Charles Bynum volunteered. Ms. Howard volunteered for both Saturday and Sunday. Mr. Allred did not have to volunteer because he had to work either Saturday or Sunday because of his seniority. Ms. Magnell continued with her normal announcements and stated that the less seniority bus driver, if no volunteers would have to do the Saturday night "U" and the Sunday night "U", these two reports always have to be assigned to the low seniority drivers because the report isn't over until 1:44 a.m.. After this was accomplished Ms. Magnell would start our weekly report starting with the most senior part-time bus driver until all of the routes were picked.

4. I remember Ms. Howard picking her Sunday report on her 2nd cycle, and when Mr. Allred picked his weekend report on his 3rd cycle he looked at Ms. Howard and said you picked the run I wanted, I laughed because often drivers loose a report because someone will pick a report earlier than they, Ms. Howard said to Mr. Allred, "that's what seniority can do for you", then Ms. Magnell joined their conversation by saying no she won't, and Ms. Magnell whitted Ms. Howards name. Ms. Howard was disappointed and upset.

5. I have been promised no benefit and I no longer work for the Town of Chapel Hill in the Transportation.

Scottie Borders
Scottie Borders

APPENDIX G

Sworn to and Subscribed to before me this 24th day of February 1995

_____

Notary Public

My commission expires April 13,1999.

G1

ANITA HACKNEY, being first sworn, hereby deposes and says:

1. I reside in Orange County, North Carolina, am over the age of 18, have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit

2. In September 1992 I was a part-time bus driver for the Town of Chapel Hill's Transportation. I have been employed by the Town of Chapel Hill for 5 years. I currently work full-time as a bus driver. As a part-time bus driver, I attended department "Run Picks," in which bus drivers picked their routes for a particular scheduling period on a seniority basis.

3. In September 1992, and all part-time "Run Picks", I remember Ms. Magnell demanding the part-time bus drivers to be quiet and pay close attention. Ms. Magnell could be somewhat intimidating. Ms. Magnell would not speak again until the part-time drivers were quiet. Ms. Magnell Operations Superintendent started with requesting for volunteers for the 5 day reports, next Ms. Magnell would inform part-time drivers who would have to work on Saturday or Sundays, after this process Ms. Magnell would ask if any higher seniority drivers wanted to work on Saturday or Sunday. I remember Ms. Mary Dexter and Ms. Victoria Howard volunteering. When high seniority drivers volunteer for weekend reports this eliminates a less senior driver from having to work on Saturday or Sunday. Ms. Magnell would next inform the part-time bus drivers. the drivers with less seniority would have to work late night "U" on Saturday or the Sunday late night "U" if no volunteers, Ms. Magnell informed all part-time drivers that had to work, or choose to work on weekend, they must pick their weekend report on their 3rd pick.

4. In September 1992, I remember when Mr. Allred started to write his name beside the Sunday night p, he turned and looked at Ms. Howard, Ms. Howard was sitting next to Ms. Ann Brown and Myself. Mr. Allred said to Ms. Howard you picked the run I wanted, Ms. Howard said that's what seniority can do for you, then Ms. Magnell said so she won't have that run, and whitted out Ms. Howard name and told Mr. Allred to sign. Ms. Howard was upset and stated she would grieve the matter.

5. In September 1992 and all run picks, Ms. Victoria Howard have always paid attention to Ms. Magnell during our run picks, or at any department meetings

Anita Hackney

Anita Hackney

witness

Sworn to and Subscribed to before me this 22 day of February 1995

Notary Public

My commission expires 2-03-96

H1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

E. VICTORIA HOWARD	:	CIVIL NO. 1:94CV00012
LARRY D. HOWARD H/W	:	
PLAINTIFF	:	JURY TRIAL
	:	DEMANDED
	:	
VS.	:	**FILED AUG. 25**
THE TOWN OF CHAPEL HILL	:	**1994 IN THIS**
	:	**OFFICE**
	:	**CLERK, US**
AND	:	
CAL HORTON, TOWN MANAGER	:	**DISTRICT**
	:	**COURT**
	:	**GREENSBORO,**
AND	:	**NC**
LOIS J. MAGNELL, INDIVIDUALLY	:	
AND IN HER OFFICIAL CAPACITY	:	
AND	:	
ROBERT GODDING, DIRECTOR	:	
OF TRANSPORTATION DEPARTMENT	:	
DEFENDANTS	:	

PLAINTIFFS AMENDED COMPLAINT

Come now all plaintiffs, by and through their attorneys, and for their amended complaint states as follows:

I. JURISDICTION

1. Jurisdiction in this court is asserted under the provisions of 28 U.S.C.A. Section 1331 (Federal Question) and U.S.C. A. Section 1343 (a) (3) and (a) (4). The matter in controversy arise under the provisions of the civil rights act of 1866, 42 U.S.C.A. Section 1981, 42 U.S.C.A. Section 1983. 42 U.S.C.A. Section 1988; and under the provisions of the Employment Discrimination Statute, 42, U.S.C.A. Section 2000 (a) et.seq.

2. Pursuant to the said statute, the Equal Employment Opportunity Commission on or about Oct. 14, 1993, having considered various of the Plaintiffs allegations issued a right to sue letter authorizing the Plaintiff to bring suit in this court under Title VII of said statute.

3. Pursuant to 28 U.S.C.A. Sec. 1367, this court has ancillary and pendent jurisdiction of Plaintiff's claim for relief under NC Gen. Statute Section 95-241 and under the common law for intentional

infliction of emotional distress and loss of consortium. Thereunder, Plaintiff requests any legal or equitable relief the court deems appropriate.

4. Venue is appropriately laid in this court pursuant to 28 U.S.C.A. Section 1391 (b) and 42 U.S.C.A. Section 2000 (e) - 5 (F) (3) in that the actions complained of took place, in greater part within the district, both the Plaintiff and Defendants have carried on business within the district, and Plaintiff resides within the district.

5. The amount in controversy exceeds the sum of $100,000,00, exclusive of interests and costs.

PARTIES

Plaintiff Emma Victoria Howard and Larry Howard bring this suit to recover for Federal, State statutory and State common law violations, as follows:

6. Plaintiff Emma Victoria Howard is a African American female citizen of the United States and a resident of Orange County, North Carolina.

7. Plaintiff Larry Howard is a African American male citizen of the United States and a resident of Orange County, North Carolina.

8. Defendant Town of Chapel Hill is a body corporate within the state of North Carolina and at all times relevant employed Defendant Cal Horton, Defendant Robert Godding and Defendant Lois J. Magnell. Defendant Town has received and continues to receive substantial Federal, State and local funding.

9. At all times relevant hereto and in all their actions described herein, all defendants were acting under color of state law.

10. Defendant Robert Godding is and at all times described herein the Director for Defendant Town's transportation department. Defendant Godding's responsibilities include managing the department, recommending proper increases for performance evaluations, handling department grievances and all administrative duties. He is sued in his individual and official capacity.

11. Defendant Town is an employer within the meaning of 42 U.S.C.A. 2000 (e) (b).

12. Defendant Cal Horton is and was at all times described in the complaint town Manager of Chapel Hill. As such, he was responsible for ensuring that all local ordinances, regulations state and federal statutes were compiled with. He is sued in his official capacity.

13. Defendant Lois J. Magnell was at all times relevant hereto operations superintendent for defendant Town's transportation department. Defendant Lois J. Magnell is being sued individually and in her official capacity as transportation department operation superintendent. At all times relevant hereto and in all her actions described herein, Defendant Magnell acted under color of state law.

FACTUAL ALLEGATIONS ON THE MERITS

14. Plaintiff began employment with Defendant Town of Chapel Hill as a bus driver I.

15. Throughout her experience as a bus driver I, Plaintiff received very good performance evaluation.

16. In September of 1992, Defendant Lois J. Magnell, then transportation Department Operations Superintendent scheduled a driver run pick and Plaintiff selected a specific run based on seniority.

17. On or about September 24, 1992, Defendant Lois J. Magnell gave a run pick selected by Plaintiff to Ben Allred, a white male driver with less seniority.

18. On or about October 30, 1992 Plaintiff Victoria Howard informed Defendant Magnell in advance that she would have to travel to Pennsylvania for a funeral and Defendant Magnell was informed that Plaintiff was requesting funeral leave form November 2, 1992 to November 7, 1992.

19. Despite properly requesting a funeral leave Plaintiff was denied said leave and received a no show rating which effected her evaluations and merit increases.

20. Plaintiff Victoria Howard repeatedly requested vacation time well in advance of dates desired and Defendant Magnell repeatedly refused Plaintiff vacation time unless she could arrange another driver to replace her.

21. Defendant Magnell repeatedly scheduled Plaintiff Victoria Howard to work from six o'clock p.m. to two o'clock a.m. and would schedule Plaintiff to return to work for a six o'clock a.m. shift in an attempt to force Plaintiff to quit her job.

22. As discriminatory practices became more apparent within the Chapel Hill transit authority, Plaintiff initiated a grievance under Defendant Town's grievance procedure.

23. Plaintiff did not prevail at her grievance hearing, and Defendant Cal Horton refused to allow Plaintiff to appeal to the personnel appeals committee.

24. Plaintiff Victoria Howard was improperly evaluated and consequently did not receive proper merit raises as a result of discriminatory treatment by Defendant Lois J. Magnell.

25. Defendant Lois J. Magnell intensified her abuse and pattern of discrimination conduct against Plaintiff immediately after Plaintiff requested numerous grievance hearing in violation of State and Federal law.

26. Instead of responding to the underlying problems within Defendant Town's transportation department, Defendant Cal Horton convened several grievance hearings all of which merely ratified the illegal discriminatory policies of Defendant Magnell and Defendant Godding.

27. In parallel with the favoritism extended by Defendant Magnell to white transportation drivers, Defendant Magnell, Defendant Godding and Defendant Cal Horton have systematically discriminated against Plaintiff by the following actions, among others:

(a) Denial of promotion and promotion opportunities, by repeated unwarranted and pretextual, and/or discriminatory false write-ups concerning no shows for driver runs, and by simultaneously denying Plaintiff merit raises.

(b) Unequal, discriminatory and disparate review of work activities;

(c) Continual imposition of adverse work conditions and unequal work demands, based on race;

(d) Denial of vacation and funeral leave based solely on race.

28. As a result of Plaintiff requesting grievance hearings, Defendant Lois J. Magnell intensified her harassment and retaliation against plaintiff by assigning adverse work schedules and other abusive discriminatory conduct.

COUNT I - DEPRIVATION OF RIGHTS

29. The allegations of paragraph 1 to 28 of this complaint are realleged herein as if fully set forth.

30. The Civil Rights Act of 1866, as amended, 42 U.S.C. Section 1983, prohibits any person acting under color of law from discrimination against any person on account of race.

31 Defendants, have, jointly and severally conspired and continued to act against Plaintiff under color of law, in their adoption and perpetuation of policies of discrimination, in violation of the foregoing statute, and have thereby deprived Plaintiff of her right to equal and non-discriminatory treatment under law.

32. Any proffered non-discriminatory reason for defendants actions are illegitimate and pretextual.

COUNT II - RACIAL DISCRIMINATION

33. The allegations of paragraphs 1 to 32 of this complaint are realleged herein as if fully set forth.

34. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. Section 2000 (a) et. seq. and the Civil Rights Act of 1991 prohibit discrimination in employment conditions or other incidents of employment.

35. Plaintiff has been discriminated against by reason of her race in the conditions and incidents of employment, causing serious and permanent injury and mental anguish to Plaintiff.

COUNT III - REPRISAL

36. The allegations of paragraphs 1 to 35 of this complaint are realleged herein.

37. Defendants Lois J. Magnell denied promotions to Plaintiff, gave her unfair performance evaluations based upon falsified no-show reports, denied Plaintiff funeral and vacation leave and assigned Plaintiff to an unreasonable work schedule in unlawful retaliation for Plaintiff's filing appropriate grievances in violation of and prohibited by Title VII, 42 U.S.C. Sec. 1981.

38. Any proffered non-retaliatory reason for defendants actions is illegitimate or pretextual.

COUNT IV. SUBSEQUENT RETALIATION

39. The allegations of paragraphs 1 to 38 of this complaint are realleged herein as if fully set forth.

40. From the time Plaintiff began engaging in protected expressive activities regarding Defendant Magnell's discriminatory practices, Plaintiff has suffered unlawful retaliation in that Defendant Magnell has harassed her as aforementioned. Such unlawful retaliation is prohibited under Title VII, 42 U.S.C. Sec. 2000 e-3 (c) and Sec. 2000 e-2 (a), the Civil Rights Act of 1991, and 42 U.S.C.A. Sec. 1981.

42. Any proffered non-discriminatory reason for Defendant Magnell's harassment of plaintiff is illegitimate and pretextual.

COUNT V - RACIAL DISCRIMINATION
(IN VIOLATION OF STATE LAW)
ANCILLARY AND PENDANT JURISDICTION

43. The allegations of paragraphs 1 to 42 of this complaint are realleged herein as if fully set forth.

44. Defendant Magnell's denial of vacation, funeral leave and promotions resulted from unlawful racial discrimination, as prohibited under NC Gen. Stat. section 95-241.

45. Defendant's denial of Plaintiff for promotion was the result of unlawful racial discrimination as prohibited NC Gen. Stat. section 95-241.

COUNT VI - INTERNATIONAL INFLICTION OF EMOTIONAL DISTRESS
(ANCILLARY AND PENDENT JURISDICTION)

46. The allegations of paragraphs 1 to 47 of this complaint are realleged herein as if fully set forth.

47. Defendants intentional actions, including subjection of Plaintiff to unnecessary and false evaluations, sudden excessive work schedules, and deliberately unmanageable work shifts in retaliation for Plaintiff's filing grievances, constitutes extreme and outrageous conduct.

48. Defendant Magnell's conduct as described above has caused severe emotional distress to Plaintiff rendering her unable to work.

49. The emotional distress has caused serious health problems, involving post-traumatic stress disorder, depression and severe insomnia. The health effects became so severe that Dr. Leonard D. Fitts recommended to Plaintiff that she resigned her employment.

COUNT VII - LOSS OF CONSORTIUM

50. Plaintiff Larry D. Howard is the husband of E. Victoria Howard.

51. The allegations of paragraphs 1 to 50 of this complaint are realleged herein as if fully set forth herein.

52. As a result of the aforesaid injuries the Plaintiff E. Victoria Howard was unable to attend to her usual and daily occupations, duties, labors and avocations and may in the future continue to be thus disabled.

53. As a result of the aforesaid discriminatory conduct and injuries, Plaintiff - husband, was deprived of the society, companionship, and consortium of his wife and may in the future be so deprived to his great loss and detriment.

REQUESTED RELIEF

WHEREFORE, on counts I, II, III, IV, V, Plaintiff requests that the court find and determine, after trial by jury as appropriate, that the Plaintiff has suffered substantial and continuing injury as a result of underlying intealia. deprivation of her civil and constitutional rights, racial discrimination and harassment, and award the following relief:

(a) Front pay representing the future earnings of the position Plaintiff should have been promoted to and was denied.

(b) Back pay, including fringe benefits and lost seniority rights, retroactive to September, 1992.

(c) An injunction prohibiting Defendants from any future discriminatory conduct towards Plaintiff, and all other similarly situated employees, including reprisal and retaliation;

(d) Attorney fees and costs;

(e) Compensatory damages of $300,000.00

(f) Punitive damages;

(g) Such other legal and equitable relief as the court deems just and proper.

JURY TRIAL DEMANDED

Curtis J. Rodgers

CURTIS J. RODGERS

N.C.S.B. 12652

P.O. BOX 904, Plymouth, NC

(919) 793-4818

Dated: May 27th, 1994

My name is Sallie C. (Dani) Daniele. I reside at 116 Carol St. Carrboro, NC. I am 47 years old and have personal knowledge of matters related to this affidavit concerning Victoria Howard.

On March 1992 I resigned from my position as a Bus Driver for the Transportation Department of Chapel Hill after working as a "part time" driver for just short of three years continuously. During this time, I worked on weekends including doing the Sunday night "P" bus route.

During my employment, we had a method of determining our reports by doing "run picks" called for at the discretion of our supervisor, Lois Magnell. Run picks progressed as follows: First Ms. Magnell would ask for volunteers for 5 day reports. Volunteers were given these in order of seniority. Following this, she asked if anyone wanted to volunteer for the "Late Night U" run on Saturday and Sunday. If no one voluntarily took these, they were assigned to the two part time drivers with least seniority. Next, Ms. Magnell would let the part timers know who else of the lowest seniority had to work weekends. We did not have to pick our weekend run on the first round, but it was often important for the ones who had a choice to get the weekend run they wanted. So weekend choices were often made quickly.

During the three years I was there, I was in the category of high seniority, among the 13 or so who had to take weekends. This meant that I was in a position to avoid any night work on weekends. However, I, like many other drivers, found it convenient to take a night run in order to have weekend days to see my child and be with my family. There, I *voluntarily* picked the Sunday night P. It was not assigned "up front" as were the night "U" runs.

I hope this information will be of help to the court as a matter of clarification.

April 7 1995

Dani Daniele

Wendie M. Eddins
Notary Public
Chatham County
My Commission Expires 9/7/97

Appendix J

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Civil Action No. 1:94CV00012

E. VICTORIA HOWARD,
Plaintiff

v.

THE TOWN OF CHAPEL HILL and
ROBERT GODDING-DIRECTOR
LOIS J. MAGNELL-
TRANSPORTATION DEPARTMENT
OPERATIONS SUPERINTENDENT,

Defendants.

AFFIDAVIT OF PAT THOMAS

PAT THOMAS, being first duly sworn, hereby deposes and says:

1. I reside in Wake County, North Carolina, am over the age of 18, have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit.

2. I am employed by the town of chapel Hill as the Personnel Director, I attempted to assure that personnel policies are administered constantly, and I reviewed all employee grievances. My last name was "Crotts" between 1981 and 1993, but after my marriage in June 1993, I assumed "Thomas" as my last name.

3. As the Town's Personnel Director, I received and helped respond to the EEOC complaints that were filed by Ms. Victoria Howard. Her first complaint, Charge No. 141930349, was filed on February 9, 1993. A copy of the charge of discrimination is attached hereto as Exhibit "A." On October 14, 1993, I received a letter from Rita L. Watson of the U.S. Department of Justice stating that Ms. Howard had requested and received a notice to commence Civil action against the town concerning this charge. A copy of the October 14, 1993 letter is

attached hereto as Exhibit "B." This Right-to-Sue letter was issued without a final determination being made by the EEOC. I subsequently received notice from the EEOC that on January 28, 1994 (after Ms. Howard filed her lawsuit against the Town of Chapel Hill), Ms. Howard filed Charge No. 141940271 against the Town. A copy of the Notice of Charge of Discrimination is attached hereto as Exhibit "C." According to the EEOC, no Right-to-Sue has been issued concerning this matter and it is still open.

4. When Ms. Howard initially raised allegations of race discrimination concerning the September 1993 "run pick," I assisted in the Town Manager's reviews of her grievances and investigation of those charges. Importantly, two African-American bus drivers (Mr. Bill Caudle and Ms. Iris Flamer) who were present at the particular "run-pick" grieved by Ms. Howard agreed that the run had not been assigned to Ms. Howard because she did not volunteer for it at the beginning of the "run-pick." Statements I obtained from Ms. Flame

r and Mr. Caudle are attached hereto as Exhibit "D." Based o this and other information I obtained during the investigation, I concurred with Mr. Horton's decision that the grievance was without merit. Importantly, our investigation determined that no evidence existed that the "run-pick" decisions had been influenced in any way because of Ms. Howard's race.

5. At the time that Ms. Howard challenged the September 1992 "run-pick" decision, she also complained that she should be receiving full-time benefits because she was working more than 37.5 hours per pay period. With Mr. Godding, I reviewed Ms. Howard's work over the prior year and discovered that she had only worked more than 37.5 hours on four occasions. In light of Town policy concerning accrual of benefits by part-time employees, I concurred with Mr. Godding and Mr. Horton that Ms. Howard had accrued benefits consistent with that policy. Further, pursuant to a request from Town Manager Horton, I reviewed Ms. Howard's personnel file and other Personnel Department information to determine whether Ms. Howard was aware that she had been receiving part-time health insurance benefits (as opposed to full-time benefits). I found a copy of the job announcement for Ms. Howard's position, which showed that the position was part time; I found Ms. Howard's initial personnel Transaction form, which showed that she signed the form making her a part-time employee; I found her initial sign up for benefits showing that she was charged a rate that was charged to all part-time employees; and I found a copy of the Employee Handbook effective at the time in question, describing differences in health insurance benefits for full-time and part-time employees. Copies of these documents are attached hereto as Exhibit "E."

6. I have been promised no benefit nor threatened any harm to provide this affidavit.

Further affiant sayeth not.

K1

Pat Thomas
PAT THOMAS

Sworn to and subscribed to
before me this the 20 day
of January, 1995.

Allison M. Lamontagne
Notary Public

My commission expires: My Commission Expires 10-28-99

(Seal)

K2

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Civil Action No. 1:94CV00012

E. VICTORIA HOWARD, Plaintiff	AFFIDAVIT OF W. CALVIN HORTON
v.	
THE TOWN OF CHAPEL HILL and ROBERT GODDING-DIRECTOR LOIS J. MAGNELL-TRANSPORTATION DEPARTMENT OPERATIONS SUPERINTENDENT, Defendants.	

W. CALVIN HORTON, being first duly sworn, hereby deposes and says:

1. I reside in Durham County, North Carolina, am over the age of 18, have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit.

2. I currently am employed by the Town of Chapel Hill as the Town Manager. I have been employed in this position since July 1990. I am familiar with, and have been involved in the grievance process concerning several of the allegations charged by Ms. Victoria Howard in her lawsuit against the Town of Chapel Hill. When I initially learned about the various charges, I took them all very seriously because I absolutely do not tolerate racial discrimination or racial harassment in any form within the municipal government. I take all such charges very seriously.

3. The Town of Chapel Hill has a very extensive grievance procedure. This process has four steps. Initially, an employee is required to meet with his or her supervisor to discuss the problem and to seek to resolve it informally. If this

informal meeting does not resolve the problem, the employee may file a written grievance within five working days of the meeting. This formal grievance constitutes Step 1. In response to the written grievance, the supervisor thoroughly investigates the matter and renders a written decision on the grievance within five days. In Step 2, if the employee is not satisfied with the Step 1 decision, the employee may file an appeal with the department head within five days following receipt of the Step 1 decision. The department head meets with the employee for the purpose of discussing the grievance fully. The department head then renders written decision on the grievance. In Step 3, if the employee is not satisfied with the Step 2 decision, the employee may file an appeal with the Town Manager. The Town Manager may, in his or her sole discretion, set a date for a formal meeting with the employee to discuss the grievance fully or refer the grievance to the Personnel Appeals Committee for consideration. The Town Manager's decision shall be final (and not appealable) concerning grievances challenging Town or Departmental policies themselves -- allegedly inconsistent or unfair application of a policy can be appealed. In Step 4, if the Town Manager elects not to refer the grievance to the Personnel Appeals Committee at Step 3, and if the grievance may be further appealed, the aggrieved employee may appeal directly to the Committee by filing a Notice of Appeal with the Town Clerk. The Appeal Committee issues recommended findings to the Town Manager, and the Town Manager has discretion to follow or disregard the recommendations.

4. Chapel Hill Transit provides bus services seven days a week, from 6:00 a.m. until 2:00 a.m. during the University of North Carolina school year, with reduced service when the University is not in session. It is my understanding that several hundred route assignments are made to drivers through a selection process called a "run pick." The Transportation Department's practice is to allow part-time bus drivers to select routes they will drive for a period of time in the "run pick." As I understand the process, the routes are selected based on seniority, with the most senior driver picking first. After all the drivers have picked one route, the selection process begins again with the most senior driver picking a second route. The selection process continues until al routes have either been selected or have been assigned. However, two of the most unpopular routes (the late night "U" route and the Sunday "P" route) are assigned at the beginning of the "run pick." The Transportation Operations Superintendent requests volunteers for these routes at the beginning of the pick. If no one volunteers, the route is assigned to the lowest seniority driver.

5. I was involved in the grievance process in which Ms. Victoria Howard alleged that she did not receive the "P" route during a September 1992 "run pick" because of her race. I concluded in the grievance process that Ms. Howard's race had nothing to do with her failure to obtain the "P" route during the September 1992 "run pick." I was also involved in her Grievance Appeal

concerning her claim that she should receive full-time benefits. Copies of a January 21, 1993 letter I wrote to Ms. Howard, and a February 8, 1993 letter I wrote to Ms. Howard concerning these issues are attached hereto as Exhibits "B" and "C," respectively. Ms. Howard requested to appeal these grievances to the Personnel Appeals Committee. When I received the appeal, I requested the opinion of Town Attorney Ralph Karpinos to determine whether her grievance should be interpreted as challenging Town or Departmental policies themselves -- and thereby, were not appealable to the Personnel Appeals Committee. After Mr. Karpinos rendered his opinion that the grievances did challenge Town or Departmental policies themselves, I informed Ms. Howard of the determination. Ms. Howard's race had absolutely nothing to do with any of these decisions concerning her grievances.

6. On November 16, I met with Ms. Howard to discuss her grievance concerning "no shows" and the August 1993 "run pick" for bus driving assignments. From October 1993 to November 1993, Ms. Howard had failed to report to her job assignment on fifteen separate occasions. After meeting with Ms. Howard, I concluded that the issuance of the "no shows" was supported by the Transportation Department's assessment of the absences in her record. I memorialized this decision in a November 24, 1993 letter to Ms. Howard. A copy of this letter is attached hereto as Exhibit "D." In that same timeframe, Ms. Howard contested her evaluation rating. In June 1993, the Town Council for Chapel Hill adopted a budget for fiscal year 1993-94, which included market and merit pay increases for employees. Pursuant to the budget, employees who received a "satisfactory," "good," or "excellent," evaluation rating received a 1% merit increase. Employees who received an "outstanding" rating received a 1.5% merit increase. A copy of my July 12, 1993 letter to Town employees concerning this matter is attached hereto as Exhibit "E." A copy of my June 29, 1993 letter to Town employees concerning the Town Council budget is attached hereto as Exhibit "F." Ms. Howard received an "excellent" rating for that timeframe. A copy of her Personnel Transaction form listing the performance rating is attached hereto as Exhibit "G." Accordingly, she received a 1% merit increase, as did all other employees receiving such ratings (regardless of their race), and was paid accordingly.

7. As I indicated earlier, I assured that a thorough and appropriate investigation was conducted concerning each of Ms. Howard's grievances. In reviewing the results of the investigations, I especially paid attention to whether or not any evidence of racial discrimination existed to support her claims. In all of her grievances, including grievances concerning "run pick" assignments, "no show" classification of absences, accrual of benefits, personal leave and funeral leave issues, and issues concerning the merit increases, I determined that no evidence at all existed that Ms. Howard was treated differently because of her race.

8. I have been promised no benefit nor threatened any harm to provide this affidavit.

Further affiant sayeth not.

W. Calvin Horton
W. CALVIN HORTON

Sworn to and subscribed to
before me this the 20 day
of January, 1995.

Allison M. Lamontagne
Notary Public

My commission expires: My Commission Expires 10-28-99

(Seal)

Section II. Attendance & Leave

Attendance

Attendance, good and bad, is important!

Good Attendance

Accumulation of Sick Leave

The Town has excellent vacation and sick leave benefits - 15 days a year of vacation and 12 of sick leave (see more on leave benefits below). Since sick leave can be accumulated with no top limit, good attendance results in a large balance after a few years.

There are several advantages of accumulating sick leave. It may be used to cover a long illness, which means that while you're hospitalized or recuperating at home you continue to draw full pay and keep all benefits. It is there for unexpected emergencies, such as the illness of a family member who requires your care. It can be used for the 30 days before disability insurance kicks in (see Section VI, *Insurance*) and it can be put toward service time for retirement (see Section VII, *Other Benefits*).

Keeping at least 24 hours is essential, to cover smaller emergencies. For example, up to the first three days of absence due to an on-the job accident must be covered by leave balances. Plus, most of us have at least one or two days a year when we really don't feel well enough to work. This is particularly true of employees in positions like Equipment Operator, Bus Driver and other safety sensitive positions, where alertness and coordination are important.

Since sudden illness can't be predicted, it makes sense to keep a good amount of leave "in the bank".

Getting to work on time, reporting unexpected absences promptly and requesting leave far enough in advance for your department to plan work around your absence are other important elements of good attendance.

1/91

Leave

Annual Leave (Vacation)

You begin earning leave during your first pay period with the Town, if you worked at least half the pat period. However, you may not take annual leave until you've completed probation. (If your job requires a 12-month probation period, you may use vacation after successfully completing 6 months.)

All employees except department heads earn 15 days of annual leave per year. Department heads (and positions above this level) earn 20 days. Annual leave hours you've earned and taken are listed on your paycheck stub.

If you work part-time, or have an irregular work week, your annual leave hours are figured by averaging the hours in a work day. Average work week hours earned are divided by 5 and averaged quarterly. Part-time employees with varying work weeks earn annual leave equal to 15 of their average work days.

Annual leave must be approved in advance. This helps the department plan for coverage during your absence. 30 days is the most annual leave you can keep.

1/91

Hours earned beyond 30 days are automatically lost.

Unused vacation leave is paid at your current rate of pay, if you leave employment and have already completed probation. If you resign, you must give at least 2-weeks notice to receive this vacation pay. (Employees at or above department head levels must give 30-day notices.)

Earnings and maximum accumulations of hours for typical fixed work weeks are:

Hours in Average Work Week	Hours Earned Weekly	Hours Earned Bi-weekly	Maximum Accumulation Hours
20	1.15	2.31	120
37.5	2.16	4.33	225
38.5	2.22	4.44	231

L5

40	2.31	4.62	240
42(Police)		4.85	252
56(Fire)		6.46	336
40(Dept. Heads)		6.15	240

Sick Leave

Sick leave must be used for personal illness or injury and for medical or dental appointments. You can also use sick leave if a family member is ill and requires your care.

You earn 12 days of sick leave per year. You begin to earn sick leave your first pay period, if you work at least half the hours in the pay period. Sick leave earned and taken is listed on your paycheck stub. There's no top limit on the amount of sick leave you can accumulate.

Unused sick leave will be recredited to laid off employees re-hired within two years.

If you have used all your sick leave, annual leave may be used to cover absences. If sick leave and annual leave are both used up, some leave without pay may be authorized by your department (unpaid absences of over a month must be approved by the Town Manager). Absences due to illness which cause you to use all your sick leave are always cause for concern.

1/91

Section II - 5

Leave of Absence

You may request a leave of absence without pay for a period of up to one year for educational, health, or other reasons. The department may approve requests of less than a month. The Manager reviews requests of greater than a month.
1/91

While your Grade will stay the same (unless you change positions or your current position is Reclassified), your step will change, due to Market and Merit Increases.

Development Range: If your salary is below Job Rate, your Step is less than 1.000, and you're in the Development Range. After Probation, you're eligible for two evaluations for Merit Increases per year, in April and October.

Performance Range: If your salary is at or above Job Rate, your Step is 1.000 or greater, you're eligible for an annual evaluation for a Merit Increase, in October.

Merit Increase: Merit increases are ranted based on performance. Levels of performance are rated as Outstanding, Excellent, Good, Satisfactory, or Below Expected Level. Percentage increases in salary are attached for each level of rating.

See the chart below. Overall, the Development Range percentages are less, but you can be considered for these increases twice a year. Performance Range percentages are higher, but you can only be considered for them in October. Any Merit Increase changes an employee's Step.

Rating	Development Range (eligible for merit in April and October)	Performance Range (eligible for merit in October)
Below Expected Level	0	0
At Expected Level/Satisfactory	2%	2%
At Expected Level/Good	3%	4%
Above Expected Level/Excellent	4%	7%
Above Expected Level/Outstanding	5%	9%

Below Expected Level Ratings

An employee who is rated Below Expected Level does not get any salary increase.

During the (approximately) 90 days following the Below Expected Level rating conference, supervisor and employee work together to solve problems which are causing below standard performance.

If performance can't be improved to At Expected Level, the employee will be rated Below Expected Level a second time, and will be terminated.

If you receive a rating you feel is unfair, you can appeal the rating under the Town's grievance procedure.

How the Market Increase Work

Assume a Market Increase of 4%. The Minimum, Job Rate and Maximum of your Grade increase by 4%, effective October 1. What happens to your salary?

One of the principles of the Performance-based Pay System is that an employee who has reached Job Rate won't fall below the Job Rate of his or her current position. This is because the Job Rate represents the average paid in our area for the job, and we believe this is the minimum rate a person who has learned the job and is rated at least Satisfactory should be paid. Development Range employees progress fairly rapidly through the Development Range, to get them to Job Rate by the time they have fully learned the job.

Using a 4% Market Increase as an example:

> An employee in the Development Range, whose performance is rated at least Satisfactory, is eligible for the full 4%. Step will remain the same, because the percentage increase in annual salary exactly matches the percentage increase in Job Rate. (Remember, Step is derived by dividing annual salary by Job Rate.)
>
> If an employee is at Job Rate, annual salary will be taken up to the new Job Rate - exactly 4%. The employee's Step will remain the same (1.000).
>
> An employee above Job Rate by less than 4%, is below the new Job Rate. This is because Job Rate has increased by exactly 4%. Salary will

be brought up to the new Job Rate. If the employee's salary exceeds current Job Rate by 2%, and there is a 4% Market Increase, the employee receives a 2% Market Increase up to the new Job Rate.

1/91

Grievance Procedure

Grievance is a claim or complaint about a disciplinary or personnel action, working conditions, or other conditions of employment. The grievance may have been caused by misrepresentation, unfai application, or lack of established policies pertaining to work conditions.

The purpose of the grievance procedure is to:

1. Encourage free opinions about working conditions.
2. Promote a better understanding of the Town's policies and procedures.
3. Increase employees' confidence that the actions taken are fair and uniform.
4. Increase supervisors' sense of responsibilty in dealing with employees.

Employees and supervisors are always encouraged to first work out problems informally. Before filing a grievance, you should have talked to your supervisor - and tried to work out a solution. However, when the problem hasn't been resolved, you can appeal the action through the following steps.

The full legal statement of the Grievance and Conflict Resolution Policy is . contained in Article XII and XIII of the Personnel Ordinance. A brief description of each step is provided below. The time limits described at each step may be waived upon mutaul consent.

Step 1 - The grievance must be written, either by using the Town's grievance form or by a letter or mamo. You should give a copy to your supervisor within five working days of the event, action or informal meeting with your supervisor. In cases of demotion or termination, and in csaes of suspension for detrimental personal conduct, you have fifteen working days to file. Your supervisor will investigate the matter and respond in writing with a decision.

Step 2 - If the grievance is not resolved to your satisfaction, you may then submit a written appeal to the department head. You have five working days to appeal the supervisor's decision. In the grievance, you should state why you disagree with the supervisor and give a suggested solution to the problem.

Step 3 - If the grievance is not resolved to your satisfaction by the department head. you may submit a written appeal to the Manager within five working days of recieving your department head's head's

response. The Manager will either schedule a meeting or refer it to the Personnel Appeals Committee. If a meeting is scheduled, you will be contacted within ten days. The meeting will be held as soon as possible.

Step 4 - If the Manager's response does not solve the grievance to your satisfaction you may appeal to the Personnel Appeals Committee. You must file a notice with the Town Clerk, within 5 working days of recieving the response from the Manager. You may request that the grievance hearing either be open (anyone can attend) or close (private).

You can't appeal position classification and pay ranges or adopted Town or department policies to the Personnel Appeals Committee. Policies which you feel have been inconsistent or unfairly may be appealed.

Personnel Appeals Committee

If you appeal the Town Manager's decision, it is brought to the Personnel Appeals Committee. This committee consists of eight citizens of Chapel Hill. Five members hear each grievance. No Town employee or officer is eligible to serve on committee.

A standing monthly meetng date is held for employee appeals, if needed. After investigating facts concerning the situation, the committee conducts a hearing. A recommendation is then submitted to the Town Manager. The Town Manager makes the final decision on grievances.

The hearing may be public or closed. The Town may elect to close the hearing to avoid disclosure of confidential employee records.

You will be paid at your reular rate of pay for time you spend outside of you regular working hours at grievance hearings.

1/91

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Civil Action No. 1:94CV00012

E. VICTORIA HOWARD, Plaintiff v. THE TOWN OF CHAPEL HILL and ROBERT GODDING-DIRECTOR LOIS J. MAGNELL- TRANSPORTATION DEPARTMENT OPERATIONS SUPERINTENDENT, Defendants.	AFFIDAVIT OF ROBERT GODDING

ROBERT GODDING, being first duly sworn, hereby deposes and says:

1. I reside in Orange County, North Carolina, am over the age of 18, have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit.

2. I am currently employed by the Town of Chapel Hill as the Director of the Transportation Department. As Director of this department, I have ultimate supervisory authority over all the employees of the Transportation Department, including full-time and part-time bus drivers. I have held this position since June 13, 1977.

3. Concerning Ms. .Victoria Howard's allegation that she was denied a particular bus route during a September 1992 "run pick" because of her race, when Ms. Howard initially raised her allegation with me as part of her Step 2 grievance procedure, I immediately investigated the matter. I concluded that Ms. Howard's race had absolutely nothing to do with her failure to obtain the particular assignment that day.

4. Practice of the Transportation Department provides that part-time bus drivers are assigned routes pursuant to a process called a "run pick." A copy of the town's policy concerning this process is attached hereto as Exhibit "A". During a particular "run pick," bus drivers select routes for assignment during the respective upcoming scheduling period. The selections are made based on seniority. The most senior bus driver picks one run first, and then the second most senior bus driver picks a run, and so on. After each driver has selected one run, the process begins over with the most senior driver picking again until all runs for the upcoming scheduling period are assigned. Ms. Lois Magnell, the Transit Operations Superintendent in September of 1992, oversaw the particular "run pick" in question. Despite this procedure for picking runs, it had been Ms. Magnell's practice in recent years to put two routes, the "U" and the "P" routes up for volunteers prior to the "run pick." If no one volunteered, these would be assigned to a low-seniority driver. Ms. Magnell followed this practice because the "U" and "P" routes were put up for volunteers before the "run pick" began. Mr. Benn Allred, a driver with less seniority than Ms. Howard, volunteered for the "P" route at that time. According to Ms. Magnell, Ms. Howard was present during this initial part of the process and could have volunteered for the "P" route. However, because Mr. Allred was the most senior driver who volunteered for the route, he was awarded that route (if Ms. Howard had volunteered, she would have been awarded the route given that she was more senior than Allred). Later during the "run pick," Ms. Howard complained that she wished to be assigned the "P" route. Ms. Magnell denied the request because Allred had already been assigned the "P" route earlier during the process. During my investigation, I found no evidence that Ms. Magnell in any way discriminated against Ms. Howard or any other African-American employee during the process. In fact, documents provided to the EEOC showing that from August 1991 to September 1992, the "P" route was driven four times by African-Americans and two times by Caucasians are attached as Exhibit "B". Accordingly, I determined that Ms. Howard's allegation of race discrimination was meritless.

5. About that same time frame, Ms. Howard also complained that she should be awarded full-time benefits because, according to Ms. Howard, she was working 37.5 hours or more during some pay periods. Again, I immediately investigated this complaint. As part of my investigation, I reviewed how many hours Ms. Howard had actually worked in previous pay periods. Departmental work records showed that in 1992, there were only four weeks in which she had been paid hours over 37.5 hours, and only three when her actual work hours had exceeded 37.5 hours. Her average hours worked over 1992 were 26.3 hours and her average hours paid were 29.5 hours. Copies of these departmental work records are attached hereto as Exhibit "C." In light of these findings, I concluded that Ms. Howard was compensated appropriately concerning her benefits. A copy of my November 24, 1992 memorandum to Ms. Howard explaining accrual of her benefits is attached hereto as Exhibit "D." Because all part-time

employees are awarded pro-rata benefits based on number of hours worked, pursuant to Town policy, I concluded that Ms. Howard had been awarded benefits consistently with other part-time employees and that race had nothing to do with her benefit accrual.

6. I recall that in 1992 Ms. Howard received three "no shows" for absences, and contested the classification of those absences because, among other things, she indicated that she had requested funeral leave. Again, I investigated her complaint when she raised it with me through the grievance process. And again, I concluded that the classifications were proper, and that Ms. Howard's race had nothing to do with those classifications. Ms. Howard appealed my conclusions to the Town Manger, Mr. Cal Horton. Later, she appealed Mr. Horton's conclusions, which were the same as mine, to the Personnel Appeals Committee. The Committee concluded that one of the classifications, for an absence occurring on November 2, was improper. However, the Committee also upheld my conclusions concerning the other absences. Copies of two "no show" decisions of the Personnel Appeals Committee are attached hereto as Exhibits "E" and "F", respectively.

7. As to Ms. Howard's allegations that she did not receive a proper merit increase in 1993 and that she was improperly charged "no shows" from August 1993 through November 1993, it is important to note that her immediate supervisor at that time was Ms. Mona Moore, an African-American woman. Ms. Moore assumed Ms. Magnell's duties after Ms. Magnell left The town's employ for medical reasons. Given that Ms. Moore reprimanded Ms. Howard for the "no shows," and diligently reviewed Ms. Howard's complaints about her September 1993 evaluation, I am confident that Ms. Howard's race again had nothing to do with decisions made concerning those issues.

8. I have been promised no benefit nor threatened any harm to provide this affidavit.

Further affiant sayeth not.

Robert Godding
ROBERT GODDING

Sworn to and subscribed to
before me on this the 20 day
of Jan., 1995.

Allison M. LaMontagne
Notary Public
My commission expires: My Commission Expires 10-28-99
(Seal)

Service Date
03-31-94
SS#:215585335

Raleigh MRI Center
3311 Merton Drive
Raleigh, NC 27609
782-7666
1800-722-6077

55013310

GARY L KAPLOWITZ MD
1924 RUIN CREEK ROAD
SUITE 103
HENDERSON NC 27536

PATIENT: HOWARD, EMMA
PO BOX3513
CHAPEL HILL, NC 27515

FAX: 17004382602
919-438-3186

H 967-7005
W 968-2700
DOB: 06-08-54 AGE: 39

LUMBAR SPINE MRI, 3-31-94:

HISTORY: 39 year old with back pain and bilateral leg pain.

FINDINGS: The patient has small ribs at T12 on plain films. Lumbar vertebral bodies numbered L1 to L5. There is only a small rudimentary disc space at L5-S1. This numbering system places the 3-4 interspace just slightly above the level of the iliac crest.

At 1-2 and 2-3, there is no HNP or stenosis. At 3-4, there is a mild diffuse bulge. In addition, there is a small lateral disc Herniation at 3-4 on the left side. At 44-5, there is a disc space narrowing and degeneration and desiccation of the disc. There is a moderate-sized central disc Herniation at this level. At 5-1, there is a rudimentary disc space. There is no HNP or stenosis. Conus ends in normal position.

IMPRESSION: 1. Small lateral disc Herniation 3-4 on the left. 2. Degeneration of the 4-5 disc with moderate-sized central disc Herniation at 4-5,

Please note that lumbar vertebral bodies were numbered L1 to L5 with only a small rudimentary disc space at L5-S1. There are small ribs at what is labeled T12.

MRI SCAN TIME = 45 MINUTES

CLAIRE M. POYET, M.D.
M3

Triangle Spine and Back Care Center

Name: Emma V. Howard **Date:** 8/03/94

Record No. 12082

EVALUATION

HISTORY: Ms. Howard is a 40-year-old lady who apparently injured her back in December of 1993, when she states that she tried to lift a seat on the bus which she was driving. Apparently, this resulted in a strain to her lumbar spine and she has since that time complained of midline back pain and right thigh tingling and numbness. This patient has since that time had extensive conservative management, including a workup with Drs. Price and Daplowitz, and other physicians. A recent bone scan has been done to rule-out an occult fracture in this region. She is complaining of pain in the above region which she ranks as 8 on a scale of 10, with sitting over 1-1/2 hours producing pain, standing over one-half hour producing pain of walking over 2 miles per day. She notes 50% of her pains in her back, and 50% in the right leg. All sensory function skills are in the 3--5 range for the most part.

MEDICATIONS: She currently is on Motrin 600 mg a day. She takes no other medications.

PAST MEDICAL HISTORY: She states that she has had no other illnesses, except for an ectopic pregnancy. She states that she occasionally has some difficulty with urination, and the inability to relax because of the pain. She has some history of migraine headaches. She is married with four children. She states that she had an episode of an injury due to an automobile accident in 1981, when she apparently spent several weeks in traction for her low back and was out of work over 7-8 months.

SOCIAL HISTORY: She denies smoking cigarettes or drinking alcoholic beverages.

X-RAYS: X-rays, as well as MRI studies were reviewed. The patient has a marked T2 signal change at L4-L5 on the lateral view, but no actual components are really notable, as far as lateral protrusion or

midline pressure of a significant nature. Other films revealed no evidence of listhesis, dislocation or congenital defect.

PHYSICAL EXAMINATION:

Reveals her to be alert and cooperative. Chest, cardiac and abdominal examination are generally within normal limits. The motor examination is 5/5. Sensory examination is intact. Deep tendon relaxes are 1-2 + and symmetrical. The bilateral and straight leg raising is normal on the left. She complains of pain with leg raising on the right at approximately 30 degrees referred to the right thigh, SI and low back area. Standing examination of the lumbar spine reveals a well-maintained lordotic curvature. There is no evidence of deformity. Forward flexion is noted to 60 degrees with some complaints of midline low back pain. Extension was done rather more easily and appeared to relieve he pain.

IMPRESSION: The patient has an L4-L5 disc Herniation which is mostly I think internal disc disruption due to the CT, T2 signal change without external mass. She has no definite neurological deficit and I believe muscular pain is discogenic in nature. I suggest the use of anti-inflammatories on a regular basis, such as Motrin, at least four times a day. She needs to also begin McKenzie extension exercises and do those daily. She may do those at home and I have suggested over a period of four to six weeks, she might well reach maximal medical improvement. It is probable that she will have a 5% permanent partial impairment of her spine at the end of that time. It is also highly unlikely that she will be able to return to any work involving driving buses or trucks, etc. She probably will be able to return, however, to some job involving sitting, standing or alternating positions on a regular basis without lifting more than 35 pounds.

James S. Fulghum, III, M.D.
JSF:dab/C216F

CC: Sandra Rodden, RN @BAB

Triangle Spine and Back Care Center

Name: Emma V. Howard September 1, 1994

Record No. 12082

8/3/94 Evaluation-see separate report.

9/01/94 Mrs. Howard returns today and has done her therapy as suggested and taken Motrin as suggested as well. She seems to be much better. She has had some swelling in the left leg which is gone today. No motor, sensory or reflex abnormalities today. In my opinion, this patient has reached maximum medical improvement. She has a 5% permanent partial impairment of the spine. She would be able to return to work not involving more than 35 pounds of lifting or sitting or standing longer than 1 hour without a break. She will return if requested and reauthorized. JSF/tb

CC: Sandra W. Rodden, RN

MEMORANDUM

TO: Victoria Howard, Bus Driver I

FROM: Mona S. Moore, Interim Operations Superintendent

RE: Written Warning - Below Expected Level Job Performance in Attendance and Punctuality

DATE: December 6, 1993

On august 24, 1993, I informed you that you had been assigned Run #203 on Fridays during Full Service. The Schedule #25 Full Service Saturday through Friday Part Time Run Assignment Sheets were attached to your August 20, 1993 pay check. This assignment was on the Friday Run Assignment Sheet. On August 24, 1993, you informed me that you would not make this report.

Since August 27, 1993, your job performance in the area of punctuality has fallen to Below Expected Level for a 6 month period.

You have been assessed "uv" or "x" time on 15 occasions between August 27, 1993 and November 30, 1993. The dates were:

1.	August 27, 1993	6.82 hours uv	No show
2.	September 3, 1993	6.82 hours uv	No show
3.	September 10, 1993	6.82 hours uv	No show
4.	September 17, 1993	6.82 hours uv	No show
5.	September 24, 1993	6.82 hours uv	No show
6	October 1, 1993	6.82 hours uv	No show
7.	October 8, 1993	6.82 hours x	No show
8.	October 12, 1993	.08 hours uv	Late 1st 1/2
9.	October 15, 1993	6.82 hours x	No show
10.	October 22, 1993	.91 hours uv	No show
		5.91 hours x	
11.	October 29, 1993	3.50 hours uv	No show
		3.32 hours x	
12.	November 5, 1993	1.41 hours uv	No show
		5.41 hours x	
13.	November 12, 1993	6.82 hours x	No show
14.	November 19, 1993	1.41 hours uv	No show
		5.41 hours x	
15.	November 30, 1993	.07 hours uv	Late 1st 1/2

You are being given this Written Warning - Unsatisfactory Job Performance for below Expected Level Punctuality. This Written Warning will have a detrimental effect on your performance evaluation. If your report late or no show

MB

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Civil Action No. 1:94CV00012

E. VICTORIA HOWARD Plaintiff	)	
v.	)	**AFFIDAVIT OF IRIS FLAMER**
THE TOWN OF CHAPEL HILL and ROBERT GODDING - DIRECTOR LOIS MAGNELL - TRANSPORTATION DEPARTMENT OPERATIONS SUPERINTENDENT, Defendants.	)	

IRIS FLAMER, being first duly sworn, herby deposes and says:

1. I reside in Orange County, North Carolina, am over the age of 18. have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit.

2. In September 1992, I was a part-time bus driver for the Town of Chapel Hills's Transportation Department. As a part-time bus driver, I attended department "run picks" in which bus drivers picked their routed for a particular scheduling period on a seniority basis. My race is African-American.

3. At eh beginning og the September 1993 "run pick," I remember that our supervisor, Ms. Lois Magnell, asked for volunteers for the weekend "U" and "P" routes. She slways did this at the beginning of the "run pick" so that she could assure that these undesirable routes were filled.

4. I remember that during that "run pick," Ben Allred volunteered for the Sunday "P" route. Because he was the only volunteer at that time, he received the route. I also recall that Ms. Vicki Howard did not request that route until later during the "run pick," after Mr. Allred had already chosen that route sometime earlier. Ms Howard did not volunteer at the time the run was being offered because she was not listening.

5. Ihave been promised no benefit nor threatened any harm to provide this affidavit.

Further affiant sayeth not.

Iris D. Flamer
Iris Flamer

APPENDIX N

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Civil Action No. 1:94CV00012

E. VICTORIA HOWARD, Plaintiff	
	AFFIDAVIT OF RALPH KARPINOS
v.	
THE TOWN OF CHAPEL HILL and ROBERT GODDING-DIRECTOR LOIS J. MAGNELL- TRANSPORTATION DEPARTMENT OPERATIONS SUPERINTENDENT, Defendants.	

RALPH KARPINOS, being first duly sworn, hereby deposes and says:

1. I reside in Orange County, North Carolina, am over the age of 18, have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit.

2. I am currently employed by the town of Chapel Hill as Town Attorney. I have held this position since August 1985.

3. Pursuant to the Town's Personnel Ordinance (&14-114, step 3) grievances challenging Town or Departmental polices themselves may not be appealed to the Personnel Appeals Committee. A copy of the Ordinance is attached hereto as Exhibit 'A." I render decisions on interpretations of the personnel Ordinance, and whether a particular grievance may proceed to step 4. The personnel Appeals Committee has no authority to render such interpretive decisions.

4. I recall in February 1993, that Victoria Howard, a part-time bus

driver in Chapel Hill's Transportation Department, requested that the Town Manager's decisions concerning grievances about part-time employee benefits and administration of the Transportation Department's "run-pick" be appealed to the Personnel Appeals Committee. After reviewing the content of the grievances, I concluded that the grievances challenged Departmental policies themselves, and thereby, could not be appropriately appealed to the committee. Ms. Howard's racial makeup played absolutely no role in my decision.

5. I have been promised no benefit nor threatened any harm to provide this affidavit.

Further affiant sayeth not.

Ralph Karpinos
RALPH KARPINOS

Sworn to and subscribed to
before me this the 20 day
of January, 1995.

Allison M. Lamontagne
Notary Public

My commission expires: My Commission Expires 10-28-99

(Seal)

ROSTER - AUGUST 1992

FULL-TIME DRIVER I'S

1. MORROW, TRINA
2. COTTON, NELSON
3. NEVILLE, DAVID
4. LLOYD, BESSIE
5. FARRINGTON, EUNICE
6. COLE, DECATUR
7. DIGGS, TONY
8. BANH, HOANG
9. SHARP, ANTHONY
10. SHARPE, ANNIE
11. NEVILLE, JERRY
12. EVANS, DWIGHT
13. ALSTON, DAVID
14. SANDERS, BRITT
15. SMITH, MAXIE
16. HOLMAN, GEORGE
17. BROOKS, ERNESTINE
18. MILLS, TOM
19. BALDWIN, BEVERLY
20. STANLEY, BILL
21. GEAR, BARBARA
22. ATKINSON, CATHERINE
23. TURRENTINE, HENRY
24. CLARK, DOUG
25. OLIVER, TERESA
26. NORMAN, MOSES
27. COUNCIL, ANNIE
28. MIMS, DONALD
29. EDWARDS, AMY
30. OLDHAM, LINDA
31. DEGRAFFENREIDT, PRISCILLA
32. ALSTON, BRYAN
33. POTEAT, LAFAYETTE
34. HARSHAW, RAY
35. IVEY, MICHAEL
36. COLSON, ARTHUR
37. ALLEN, CURTIS
38. HAYES, NANCY
39. ROGERS, HAROLD
40. CROUCHLEY, JEFF
41. NOELL, JENNIFER
42. NORWOOD, STAN

PART-TIME DRIVER I'S

1. LACK, ELIAS
2. KAY, LINDA
3. MCCOLLUM, BILL
4. DEXTER, MARY (PATTERSON, DALE)
5. ELLIS, CRISTAL
6. BORDERS, SCOTTIE
7. DAMIN, DAVID
8. NEWMAN, CAROLYN
9. HOWARD, VICKIE
10. BARKER, BRAD
11. HACKNEY, ANITA
12. EDWARDS, TERESA
13. BYNUM, CHARLES
14. STOVER, JASON
15. DEGRAFFENREID, ROBERT
16. CAUDLE, BILL
17. ALLRED, BEN
18. FLAMER, IRIS
19. SUITS, ROGER
20. CLARK, WALTER
21. HALL, HARRIET
22. YOUNG, DUANE
23. BROWN, ANN
24. BLUE, CHRISTOPHER
25. HOLEMAN, KENNITH
26. BLOCH, FELIX

SPECIAL EVENTS DRIVERS

1. KIRBY, MICHAEL
2. POUNDS, CHRISTINE

SRT DRIVERS - FULL TIME

1. POTEAT, MAC
2. MITCHELL, LAURIE
3. TURNER, BILL

SRT DRIVERS - PART-TIME

1. STORCH, STEVEN
2. MCADAMS, CLARENCE
3. BURNETTE, GEORGE

43. ELLIOTT, LINDA
44. BARKLEY, PETER
45. SEYMOUR, THURMAN
46. GIBBS, ROBERT
47. BOOTH, JOYCE
48. COLEMAN, WILLIAM
49. VILLINES, RANDA
50. TEAGUE, RONALD
51. BLACKNELL, SCOTT
52. TRAPP, OTISTEEN
53. RICHARDSON, HARRELL
54. AKANOH, SANDRA

SUPERVISORS

1. MARLOW, WILLIE
2. EVANS, ALVIN

Continued Roster

3. FARRISH, JOHN
4. KELL, BETH

SUPERINTENDENT

1. MAGNELL, LOIS

4. CARTER, BILL
5. ADAMS, DEREK

EZ RIDER DRIVERS - FULL-TIME

1. CARLSON, CHRIS
2. JACKSON, BRENDA
3. BRINSON, ADDIE

DISPATCHERS

1. SCHWINTZER, IRIS
2. HINTON, CEBERETTIA
3. BOOTH, CHARLES
4. EVANS, WILLIAM

WEEKEND DISPATCHER

1. THOMPSON, EVA

SECRETARY

1. WATSON, BETSY

ASSISTANT SUPERINTENDENT

1. MOORE, MONA

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Civil Action No. 1:94CV00012

E. VICTORIA HOWARD, Plaintiff	
	AFFIDAVIT OF LOIS MAGNELL
v.	
THE TOWN OF CHAPEL HILL and ROBERT GODDING-DIRECTOR LOIS J. MAGNELL- TRANSPORTATION DEPARTMENT OPERATIONS SUPERINTENDENT,	
Defendants.	

LOIS MAGNELL, being first duly sworn, hereby deposes and says:

1. I reside in Durham County, North Carolina, am over the age of 18, have personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit.

2. On January 1, 1994, I officially retired from my position as Superintendent of Operations for the Transportation Department at the Town of Chapel Hill. I retired for medical reasons. I had been on disability leave since July 17, 1993. As Superintendent of Operations, I had direct supervisory authority over the full-time and part-time bus drivers who were employed by the Transportation Department. I had been Superintendent of Operations since August 1, 1981. Ms. Mona Moore was my assistant for the entire time.

3. During my tenure, Ms. Victoria Howard, a part-time bus driver, filed numerous grievances concerning various personnel decisions on my part. For example, she challenged my decision concerning unexcused absences of hers in November 1992; she challenged her "excellent" rating in a 1993 evaluation (she

contended she should have received an "outstanding" rating); she challenged a September 1992 route assignment; and she challenged the manner in which her benefits were being accrued. In all of these maters, and other matters grieved by Ms Howard, I had made my decision based on Town and/or Department policy in place at that time. At no time did I ever even consider Ms. Howard's race as a source of input into these decisions.

4. Concerning the September 1992 'run-pick," Ms. Howard complained after she did not receive a "P" route assignment during that meeting. The "run-pick" meeting is a process by which part-time bus drivers are assigned routes for the upcoming scheduling period. Routes are generally picked on the basis of seniority. At the beginning of the process, the most senior part-time driver picks one report first. Then the second most senior driver picks one report. The process continues until all of the part-time bus drivers have picked one report. At the conclusion of that cycle, the most senior driver picks his/her second route. The process continues in this fashion until all of the routes for the upcoming scheduling period are assigned. At the beginning of the meeting, as had been my practice for several months, I requested volunteers for the "P" and "U" routes. I did this because these were the least desirable runs, and I wanted to assure that they were covered. If no one volunteered for the routes, they were assigned to the lowest seniority driver. During the September 1992 "run-pick," I followed this procedure. This process was completely consistent with department policy on assigning reports. I called for volunteers for the "U" route. No one volunteered, so I assigned it to the lowest seniority driver at that time, who was a male Caucasian. Next I called for volunteers for the "P" route. Mr. Ben Allred was the only volunteer. Ms. Howard was present at the meeting when I requested volunteers. However, as I recall, she was talking and not paying attention at the time. After the selection process began, Ms. Howard requested the "P" route which had already been assigned to Mr. Allred. Mr. Allred was of lower seniority than Ms. Howard, but because the assignment had already been made at the beginning of the "run-pick," I denied her request for that assignment. I did inform Ms. Howard that she could attempt to trade that assignment with Mr. Allred. As I recall, Ms. Howard was unable to do so because Mr. Allred was unwilling to give up his slot. This is all that happened. Ms. Howard's race had nothing to do with my decisions.

5. Subsequently, Ms. Howard filed a formal grievance with me challenging the September 1992 route assignment and requesting that she be paid full-time benefits in light of the number of hours that she worked. Concerning the first issue, I explained again to Ms. Howard that the assignment had been made at the beginning of the route and that if she had wanted that route, she should have volunteered for it at that time. If she had done so, given that she had more seniority than Mr. Allred, she would have received the route. Concerning the second issue, I explained to Ms. Howard that part-time employees accrue benefits on a pro-rata basis as determined by the number of hours they have

worked during the previous calendar quarter. I double checked our accounting of Ms. Howard's benefits, and concluded that they had been accrued accurately. I further investigated the average hours that she had worked per week over the prior year as is required by Town Ordinance for determining full-time status, and concluded that Ms. Howard had not come close to working and average of 37.5 hours per week over that period (which is required for full-time status). Thus, I concluded that her benefits had been accrued in a fashion consistent with those accrued by all other part-time employees, and that Ms. Howard had not worked a sufficient amount of time during the prior year to be classified as full-time. Accordingly, I denied her grievances. An October 14, 1992 letter to Ms. Howard describing by conclusions is attached hereto as Exhibit "A."

6. Concerning funeral leave, I recall that Ms. Howard was charged with two "no shows" in November 1992 for attending a funeral without obtaining prior approval from me. Ms. Howard challenged these classifications in the grievance process, and finally appealed the classification to the Town Personnel Appeals committee. The Committee concluded that Ms. Howard had obtained approval from a dispatcher concerning one of the absences, but had no justified excuse concerning the other. Again, when Ms. Howard raised the funeral leave issue, I made my decisions based on department and Town Personnel policy in place at the time. Ms. Howard's race was not a factor in my decision.

7. Concerning Ms. Howard's allegations about her merit increases, as I recall, she had received a "excellent" rating for the period in question. Ms. Howard was upset because she did not receive an "outstanding" rating. I did recalculate Ms. Howard's base score in light of her complaints, and even raised her base score to reflect an error that I discovered. This increase in her score, however, was not enough to increase her rating to the "outstanding" category.

8. I have been promised no benefit nor threatened any harm to provide this affidavit.

Further affiant sayeth not.

Lois Magnell
LOIS MAGNELL

Sworn to and subscribed to
before me this the 20 day
of January, 1995.

Allison M. Lamontagne
Notary Public

My commission expires: My Commission Expires 10-28-99
(Seal)

NAME	RACE	SEX	SAT	SUN	DAYS	SATURDAY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
	RACE	SEX				DATE OF HIRE							
1 [illegible]	W	M				3-80							
2 WH, LINDA	W	F				10-80							
3 MCCLELLAN, S	W	M				1085							
4 DEATEN, [illegible]	W	F				2-87							
5 ELLIS, C	B	M				8-88							
CORLESS, O	B	M				11-88							
6 DAVIS, DAVID	W	M				11-88							
7 HENRY, C	B	F				11-88							
8 HOWARD, V	B	F				12-89							
9 BARKER, BOB	W	M				12-89							
10 HACKNEY, A	B	F				8-90							
11 BYNUM, C	B	M				12-88							
12 COLLIE, BILL	B	M				11-91							
13 ALLRED, BEN	W	M				1191							
14 FLOWER, IRIS	B	F				11-91							
SUITS, ROGER	W	M				11-91							
16 CLARK, W	B	M				11-91							
17 HALL, HARRIET	W	F				4-92							
18 BROWN, [illegible]	B	F				8-91							
19 BLUE, CHRIS	B	M				8-92							
20 HOLLOWAY, [illegible]	B	M				8-92							
21 BLOCK, FELIX	W	M				8-92							
22 DANIEL, L	W	M				1292							
23 BERSLEY, C	B	M				12-92							
24 THACKER, PAUL	B	M				12-92							
25 PURIFOY, CARL	B	M				12-92							
26 WILLIAMS, T	W	M				12-92							
27 MORAE, LEE	B	M				12-92							
[illegible]SON, S	B	M				1292							
29 ALSTON, W	B	M				12.92							
30 SEELBINDER	W	M				12-92							

Part Time
1993

MEMORANDUM

To: Charles (Toby) Booth, Transit Dispatcher

Ceberettia Hinton, Transit Dispatcher

From: Lois J. Magnell, Operations Superintendent

RE: Assignment of Vacant Reports

Date: August 27, 1992

Several drivers and/or supervisor staff have signed up for the extra assignments. It was also necessary to assign some of the work, these are noted "assigned". Please DO NOT adjust regular work hours to compensate for the extra assignments listed below. If you have any questions please see me.

The open reports are;

MONDAYS;

Run #152 P3 6:21 pm to 8:19 pm
Bill Caudle starting Monday 8-31-92

Run #152 U1 9:29 pm to 1:55am
Ann Brown assigned to Run #149 starting 8-31-92.
Delete her a.m. report on Tuesdays.

TUESDAYS;

Run 3203 a.m. STBY assigned to Brad Barker starting 9-01-92

Run #151 J93 4:01 pm to 7:24pm
Scottie Borders starting Monday 8-31-92

Run #151 p3 8:03pm to 10:18pm
Nancy Hayes 9-01, 9-08, 9-15, 9-22, and 9-29-92 only
Ceberettia Hinton 10-13-92 only
Vickie Howard assigned to Run #149 10-06, and 10-20 and every Tuesday thereafter until the next run pick

THURSDAYS

Run #150 GL18 4:18pm to 7:47pm
Ann Brown starting Thursday, 9-03-92

Run #150 Stby (Late Night) 2/10 hrs
Amy Edwards 9-03, 9-10, 9-17, 9-24-92
(If no volunteers for October and November P.M. Fixed Route vacation will not be approved.)

FRIDAYS:

Run #150 GL18 4:18pm to 7:47pm
Scottie Borders starting September 04, 1992

Run #150, Stby (Late Night) 2/10 hrs
No volunteers, will not be able to grant late drivers a vacation until volunteers are found.

SATURDAYS

Run #112 U1 6:01pm to 1:57am
William Evans 8-29 and 9-05-92 only

Ann Brown as #201 standby assign to Run #112 starting 9-12-92 and holding until next run pick

Daytime Standby
David Damin will cover daytime reports but not late night U Route

SUNDAYS

Run #202 Stby 4:15pm to ? 2/10:00 hrs
Charles Bynum 9-06, 10-04, 10-11, 10-28, 10-25-92
Nancy Hayes 9-13 & 9-20-92
Elias Lack 10-11, 11-08, 11-22-92
Felix Bloch Assigned as lowest seniority part time driver without a Sunday report. Will have to over 11-15 & 11-29-92

CHAPEL HILL TRANSPORTATION DEPARTMENT

EMPLOYEE'S LEAVE RECORD

T

NAME Hollowood, Emma (Vicki) HIRED _____ No. 853

DATE	VACATION LEAVE EARNED	VACATION LEAVE USED	VACATION LEAVE BAL	SICK LEAVE EARNED	SICK LEAVE USED	SICK LEAVE BAL	OTHER EARNED	OTHER USED	OTHER BAL	EXPLANATION
10-25-91 11-06			42.67	✓	9.25	28.36				SAT - WORK - HOL: 10/4
10-27 11-01	1.23	8.12	56.43	1.01		20.13				
11-02 11-03		4.25 8.05						9.25 HOL		SAT - WORK
11-05 11-07		6.75 4.00	✓			✓		4.00 VAC		TH - Professional
11-08 11-15	1.68 1.28		30.06 31.34	1.02 1.02		21.15 22.17				
11-24 11-25	1.28		32.62	1.05	6.00	17.19				TH - STAFF - DOCTOR
11-28 11-29								6.00 VAC 6.00 VAC		F - WORK "
11-27 11-30	1.23	8.75	25.90	1.02		18.21 ✓				
12-6 12-13	1.23 1.28		26.42 27.71	1.04 1.02		19.23 20.25				
12-20 12-23 25-26	1.23		28.94	1.02		21.27 ✓		12.00		XMAS
12-27 12-31	1.23	4.85	30.32 25.32	1.02		22.29				
12-28 1-01-92		4.95								
1-03	1.14		22.01	1.31		23.60		6.45 H		NY

Exhibit Z

CHAPEL HILL TRANSPORTATION DEPARTMENT

EMPLOYEE'S LEAVE RECORD

T

NAME Howard, Emma (Vickie) HIRED _____ No. 2537

DATE	VACATION LEAVE			SICK LEAVE			OTHER			EXPLANATION
	EARNED	USED	BAL	EARNED	USED	BAL	EARNED	USED	BAL	
3-22-91 3-29			66.12			48.09		7.2H	·	OTR
3-29 3-30	1.77	4.00	67.89	1.41		49.41				
4-5 4-10	1.77	5.41	64.66	1.41		50.82				
4-12 4-19	1.77 1.77		58.42 59.99	1.41 1.41		52.26 53.64				
4-26 4-30	1.77		61.76	1.41	4.28	55.05				T-DENTAL - NOSH
5-1 5-3	1.77		1853	1.41	5.28	4697				DED.
5-4					18.00					SICK-LEAVE SHARE - RECEIVED SHARE
5-10 5-17	0 0		11 "	0 0		3297 "				NO ONE " "
5-24 5-31	0 0		" "	0 0		" "				" " " "
6-7 6-14	0 0		" "	0 0		" "				LOA "
6-21 6-28	0 0		" "	0 0		" 4				" "
7-4 7-5	1.59		6502	1.27		4024		6.75H		OTH
7-12 7-19	0 0		" "	0 0		" "				LOA "
7-26 8-2	0 0		" "	0 0		" "				" "
8-9 8-16	1.59 1.59		64.71 66.30	1.27 1.27		44.51 46.77				
8-23 8-30	1.59 1.59		68.89 70.48	1.27 1.27		48.05 49.32				
8-30 9-6		2.00						2.00 VH 6.75H		IC - NOSHOW LATE
9-6 9-12	1.59		71.07	1.27	5.82 6.48	44.59				TH - NO SHOW
9-13 9-13	1.59		72.66	1.27		33.92			*	T - NO SHOW
9-20	1.59		74.25	1.27		35.19				
9-27 9-27	1.59	9.17	66.67	1.27		36.46				T-RSN - LATE
10-4 10-11	1.28 1.28		6795 6923	NOA NOA		32.88 34.50				
10-12 10-13					41.8 8.06					SICK-LEAVE SHARE RECEIVED SHARE
10-18 10-25	1.28		70.51	1.06						SICK-LEAVE SHARE
10-25 11-1	1.28	8.00	63.51	1.06						

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Civil Action No. 1:94CV00012

E. VICTORIA HOWARD, Plaintiff	)	
	)	AFFIDAVIT OF
	)	MONA MOORE
v.	)	
THE TOWN OF CHAPEL HILL and ROBERT GODDING-DIRECTOR LOIS J. MAGNELL- TRANSPORTATION DEPARTMENT OPERATIONS SUPERINTENDENT,	)	
Defendants.	)	

MONA MOORE, being first duly sworn, hereby deposes and says:

1. I reside in Orange County, North Carolina, am over 18, have a personal knowledge of the matters stated in this affidavit, and am competent to testify to the matters stated in this affidavit.

2. I am currently employed by the Town of Chapel Hill as the Transit Operations Superintendent for the Transportation Department. I have worked with the Town of Chapel Hill since December 1975. I initially began my work as a bus driver, and subsequently was promoted to Assistant Transit Superintendent. I have worked with Mr. Bob Godding since he was hired as the Director of the Transportation Department in the 1970s. When I was Assistant Transit Superintendent, I worked closely with Ms. Lois Magnell, who was the Transit Operations Superintendent until she left in July 1993 due to health reasons. I am a member of the African-American race. In my extensive dealings with Mr. Godding and Ms. Magnell, I have never known either to make employment decisions based on race. I have also never heard either make racial slurs. In my opinion, all of their decisions concerning Ms. Howard were based

on Town procedures -- not based on Ms. Howard's race.

3. On December 6, 1993, I issued Ms. Howard a written warning because of her below-expected-level job performance in attendance and punctuality. Specifically, from August 27 through November 30, 1993, Ms. Howard failed to report for assignment on fifteen separate occasions. A copy of the written warning that I issued is attached hereto as Exhibit "A" Ms Howard refused to sign this document, and said that she would present the present matter in grievance. I made a notation of this on Page 2 of the December 6, 1993 memorandum. Ms. Howard's race, which is the same as mine, had nothing to do with my decision to issue this written warning.

4. In July 1993, the Town Council adopted a budget for fiscal year 1993-94 which provided for merit increases (as well as marked increases) in employees' wages. Employees who received a "satisfactory," "good," or "excellent" rating received a 1% merit increase. Those who received a "below expected" rating received no merit increase. Those who received a "outstanding" rating received a 1.5% merit increase. Ms. Howard received an overall twelve month "excellent" rating for the period from July 1. 1992 to July 31, 1993, and thus, was entitled to and in fact received a 1% merit increase (in addition to her 3.4% market increase). However, because Ms. Howard was not satisfied with this result, she contested her raw score from which her rating was determined. Specifically, she raised several issues concerning why her raw score should be increased. I investigated those concerns, and on December 13, 1993, issued a determination agreeing with an earlier determination by Ms. Magnell, that Ms. Howard's raw score should be increased from a 91.6 grade to a 92.96 for the first six months of her evaluation. The new first six-month raw score, however, still was not enough to increase her overall twelve-month rating to "outstanding." A copy of the resuls of my investigation are attached hereto as Exhibit "B." Again, Ms. Howard's race did not impact my decision concerning her evaluation in any respect.

5. I have been promised no benefit nor threatened any harm to provide this affidavit.

Further affiant sayeth not.

Mona S. Moore
Mona Moore

Sworn to and subscribed to
before me this the 20 day
of Jan, 1995.

John R. Peaven
Notay Public

My commission expires: 2-1-96
Seal

TRANSPORTATION DEPARTMENT
Operations Division
CHAPEL HILL, NC 27516

DATE 9/6/93

TO Victoria Howard

SUBJECT Step 1 Grievance
Re: Friday Assignment

This Speed memo is to let you know that I'm meeting with Bob on 9/7/93 @ 1:00 pm to discuss my findings regarding this Grievance.
I'm trying to meet with you no later than Thursday.
Questions? See me.

Thanks
Mona

☐ PLEASE REPLY ☐ NO REPLY NECESSARY SIGNED

R2

TRANSPORTATION OPERATIONS DIVISION
DRIVER I RATING FORM

NAME Howard, Vickie EMP # 2537 FULL TIME ___ PART TIME ✓ M ___ F ✓ DATE 12 QUAL. PER. FROM 1-1-93 TO 6-30-93

TOTAL POINTS 91.6 ABOVE ✓ AT ___ BELOW ___ MERIT ACCOMMODATION ___ $ 19,244 19,224

CATEGORY	JOB ELEMENT	POSSIBLE POINTS	RATING	POINTS EARNED	COMMENTS
I-A	SAFETY & ACCIDENTS	20.0	AB	20.0	Safe Driver
I-B	SUPERVISOR EVALUATIONS - ON BOARD	7.5	AT	5.0	3.97
I-B	SUPERVISOR EVALUATIONS - ON STREET	7.5	AT	5.0	3.97
I-C	SCHEDULE ADHERENCE AND DELAYS	12.0	AB	12.0	Handled delays, Maintained relief
I-D	OPERATOR DUTIES	6.0	AB	6.0	All paperwork Correct
I-E	MISCELLANEOUS - UNIFORM CODE	3.0	AB	3.0	Neat & Clean
I-E	MISCELLANEOUS - BLOCK SHEETS/Vouchers	3.0	AB	2.0	4-B's interchanging one number
I-E	MISCELLANEOUS - DEFECT CARDS	2.0	AB	2.0	All complete
I-E	MISCELLANEOUS - CARE OF PERSONAL EQUIPMENT	1.0	AB	1.0	No Lunch Lounge
II-A	PUNCTUALITY	7.5	AT	5.0	2-28-93 Late, 4-17-93 Late
II-B	ATTENDANCE	7.5	AA	7.5	Only Two Sickness
III-A	PUBLIC RELATIONS	10.0	AB	10.0	No Complaints, Good PR
III-B	DISPATCHER EVALUATIONS	15.0	AB	12.5	4.67+4.67+3.84=13.19÷3=4.41
IV-A	STANDBY ASSIGNMENTS	20.0/10.0	AT	6.5	3.5
V-A	VOLUNTARY ASSIGNMENTS - FILL-IN DISPATCHER	5.0	—	—	NA
V-A	VOLUNTARY ASSIGNMENTS - FILL-IN EE RIDER	5.0	—	—	NA
V-A	VOLUNTARY ASSIGNMENTS - NEW DRIVER TRAINING	5.0	—	—	NA
V-A	VOLUNTARY ASSIGNMENTS - CHARTERS	5.0	—	—	NA
VI-A	COMMENDATIONS - PUBLIC SERVICE	5.0	—	—	NA
VI-A	COMMENDATIONS - SPECIAL	5.0	AA	5.0	5-14-93 2yr Safe Driving 1-1-93 Special Comm. Patron Courtesy
	TOTALS				

CALCULATIONS 55÷6.0=91.67×45=41.25+Cat II 50%=92.75+95.50=183.25÷2=91.6

AM 92.71 after taking away Standby pts

total points = 94.105

TRANSPORTATION OPERATIONS DIVISION
DRIVER EVALUATION FORM

NAME Bowers, Steven E. BADGE # 2414 FULL TIME ___ PART TIME ¾ ½ ¼ RACE O EVAL. PER. FROM 7-1-90 TO 12-1-90

FINAL POINTS _____ ABOVE _____ AT _____ BELOW _____ MERIT RECOMMENDATION _____

SECTION	JOB ELEMENT	POSSIBLE POINTS	RATING	POINTS SCORED	COMMENTS
I-A	SAFETY & ACCIDENTS	20.0	AV	20.00	Safe Driver
I-B	SUPERVISOR EVALUATIONS - ON BOARD	7.5	AV	5.00	Rte King Loop Skill
I-B	SUPERVISOR EVALUATIONS - ON STREET	7.5	AV	5.00	Skill Achieved Driver
I-C	SCHEDULE ADHERENCE AND DELIEFS	17.0	AV	12.00	Maintains Schedule
I-D	OPERATOR DUTIES	N/A	AV	N/A	All Employees Here!
I-E	MISCELLANEOUS - UNIFORM CODE	1.0	AV	1.00	Ok Uses Uniform
I-E	MISCELLANEOUS - BLOCK SAFETY	1.0	AV	1.00	Ok Uses Uniform
I-E	MISCELLANEOUS - DEFECT CARDS	1.0	AV	1.00	All Completed
I-E	MISCELLANEOUS - CARE OF PERSONAL EQUIPMENT	1.0	AV	2.00	Exceptional P.E.C.
II-A	PUNCTUALITY	1.0	AV	1.00	Has Not Been Late
II-B	ATTENDANCE	1.5	AV	2.00	Excellent
II-C	PUBLIC RELATIONS	1.5	AV	2.00	Loves Customers
II-D	DISPATCHING EVALUATIONS	15.0	AV	12.00	Loves P.R.
III-A	STANDBY ASSIGNMENTS	15.0	AV	12.00	2 STBY
III-A	VOLUNTARY ASSIGNMENTS - FILL-IN DISPATCHER	10.00	AV	10.00	
III-A	VOLUNTARY ASSIGNMENTS - FILL-IN RT DRIVE	1.0	AV	—	
III-A	VOLUNTARY ASSIGNMENTS - NEW DRIVER TRAINING	N/A	AV	N/A	
III-A	VOLUNTARY ASSIGNMENTS - CHARTERS	1.0	AV	1.00	Helps Out w/ Trng.
III-A	CONSIDERATIONS - PUBLIC SERVICE	N/A	AV	N/A	Trng Asst Extension Class
III-A	CONSIDERATIONS - SPECIAL	1.0	AV	—	
	TOTALS	1.0	AV	5.00	Commendations Given: Ltr. 11-19

CALCULATIONS 54.60 - 50.4 x 365 = 3285 CAT II - 91.35

PART TIME DRIVERS D THEIR ON AND OFF DAYS FU SERVICE 93

NAME	Sat.	SUN.	MON.	TUE.	WED.	THU.	FRI.	HRS
LACK, ELIAS			XXX	XXX		XXX	XXX	26
KAY, LINDA			XXX		XXX	XXX	XXX	25
McCOLLUM, BILL			XXX	XXX	XXX	XXX		26
DEXTER, MARY	XXXX			XXX	XXX	XXX	XXX	40
ELLIS, CRISTAL			XXX	XXX	XXX	XXX	XXX	38
DAMIN, DAVID			XXX	XXX	XXX	XXX		26
NEWMAN, CAROLYN			XXX	XXX	XXX		XXX	21
HOWARD, VICTORIA				XXX	XXX	XXX	XXX	20
BYNUM, CHARLES	XXX		XXX	XXX	XXX			28
SUITS, ROGER	XXX				XXX	XXX	XXX	26
HALL, HARRIET			XXX	XXX	XXX	XXX	XXX	35
BROWN, ANN	XXX		XXX		XXX	XXX		27
BLUE, CHRIS	XXX			XXX	XXX	XXX	XXX	37
BLOCH, FELIX	XXX			XXX	XXX	XXX		32
DANIEL, LUTHER	XXX					XXX	XXX	25
BEASLEY, CHARLES	XXX		XXX	XXX	XXX			25
THACKER, PAUL	XXX		XXX			XXX	XXX	26
PUREFOY, CARL	XXX			XXX	XXX	XXX		25
WILLIAMS, TOM			XXX	XXX	XXX	XXX	XXX	32
McRAE, LEE			XXX	XXX	XXX	XXX	XXX	27
JACKSON, SAM			XXX	XXX	XXX	XXX	XXX	36
ALSTON, WALLACE	XXX		XXX	XXX		XXX	XXX	36
SEELBINDER, DAVE		XXX			XXX	XXX		26
JOHNSON, DAVID	XXX			XXX	XXX	XXX		HRS 25
FEARRINGTON, BEV	XXX		XXX		XXX	XXX	XXX	37
BARNES, ERIC		XXX		XXX	XXX		XXX	26
DEBREAUX, FERNAN		XXX	XXX		XXX		XXX	30
POUNDERS, JOSEPH		XXX	XXX	XXX			XXX	22
McJUNKIN, BRIAN		XXX	XXX	XXX		XXX		22
MASON, WILBERT		XXX	XXX	XXX			XXX	32
CLANCY, DONNA	XXX		XXX	XXX			XXX	30

CHAPEL HILL TRANSIT ON-BOARD DRIVER EVALUATION Exhibit 1-E

DRIVER Victoria Howard DATE 12/3/91 TOTAL EVALUATION TIME 1 hr. 25 mins.

STARTING TIME 2:05pm ENDING TIME 3:30pm

ROUTE(S) DRIVEN 1 BLOCK(S) 93 REGULAR RUN? YES ✓ NO ____

US NO. 727 RIDERSHIP: LIGHT ____ AVERAGE ✓ HEAVY ____

BOARDING LOCATION First Baptist Church WEATHER CONDITIONS Cool

EVALUATOR Rhona S. Moore

Pre-Trip Review

1. Is driver wearing complete uniform, including name tag? YES ✓ NO ____
2. Is uniform neat, clean and wrinkle free? YES ✓ NO ____
3. Is the driver clean, neat and free of unpleasant body odor? YES ✓ NO ____
4. Are non-uniform apparel items (sweater, coat, hat, vest, shoes, jewelry) appropriate, clean and neat? YES ____ NO ✓ + pants unhemmed.
5. Does the driver have each of the following items: Punch ✓ Watch ✓ Extra Schedules ✓ Pen or Pencil ✓ Block Sheet ✓ Transfers ✓ Defect Card ✓ Dash Sign NA
6. Was a complete pre-trip performed on the lot? YES NA NO ____
7. Was the Defect Card completed properly and signed? YES ✓ NO ____
8. Was a radio and time check done? by bus YES ✓ NO ____
9. Was the driver's watch set correctly? YES ✓ NO ____
10. Was the 10 m.p.h. limit observed leaving the lot? YES NA NO ____
11. Displays proper head, ~~dash~~ and side signs? YES ✓ NO ____

In Traffic Operation

1. Observes all posted speed limits and makes appropriate speed adjustments for traffic and road conditions. 5 4 (3) 2 1
2. Makes clear, smooth turns at 5 m.p.h. or less. Does not hit curb or violate oncoming traffic lane. 5 4 (3) 2 1
3. Operates in right hand traffic lane and avoids bicycle lane except for service stops. 5 (4) 3 2 1
   Pulls into traffic safely and smoothly. 5 (4) 3 2 1
5. Stops at all required railroad stops, using 4-way flashers and opening front door. 5 (4) 3 2 1
6. Reduces speed when approaching intersection and does not "rush" amber lights. 5 (4) 3 2 1
7. Operates in a safe manner in all types of traffic, weather & load conditions. 5 (4) 3 2 1
8. Follows proper line of route, including out of and into garage. 5 4 3 2 1
9. Stops are smooth and gradual, but does not roll once stop is completed. 5 4 (3) 2 1
10. Stops at least 5 feet behind other vehicles and does not "creep" forward. 5 (4) 3 2 1
11. Eases over speed bumps, slows for dips and pot holes. 5 (4) 3 2 1
12. Does not accelerate or operate bus with doors open. 5 (4) 3 2 1
13. Keeps interior, passenger compartment lights on when in service after dark. 5 (4) 3 2 1
14. Is courteous to other motorists, bicyclists, pedestrians, fellow bus drivers. 5 (4) 3 2 1
15. Backs only when necessary, uses 4-way flashers and sounds horn. 5 (4) 3 2 1
16. Uses proper steering techniques and keeps feet properly positioned. 5 (4) 3 2 1
17. Keeps two-way radio on and answers all Dispatcher calls. 5 (4) 3 2 1

Service Stops & Layovers

1. Properly signals all turns and service stops. 5 (4) 3 2 1
2. Makes ~~smooth~~ service stops only in authorized locations, keeping front wheel 10 to 12 inches from curb, back wheel 18 inches or less from curb and does not open door into signs. 5 4 (3) 2 1
3. Kneels bus for elderly and mobility handicapped. 5 (4) 3 2 1
4. Uses proper layover point, uses proper "shut down" if bus is left unattended, leaves layover on time or makes appropriate schedule adjustments. 5 (4) 3 2 1

Schedule Adherence

1. Arrives at time points according to Block Sheet 5 (4) 3 2 1
2. Does not leave time points more than 5 minutes late. 5 (4) 3 2 1
3. Radios Dispatcher if running 5 minutes or more late and gives the reason. 5 (4) 3 2 1
4. Makes schedule adjustment layovers at uncongested bus stops, adjusts speed for passenger loads, does not allow patrons in front of yellow line or in step wells. 5 (4) 3 2 1

On-Board
P. 2

Fares & Transfers

1. Collects the proper fare or punches ticket correctly. 5 4 3 2 1
2. Checks all bus passes and requests additional cash fare when appropriate. 5 4 3 2 1
3. Issues transfers correctly and only accepts proper transfers. 5 4 3 2 1
4. Clears the cash plate after each cash fare. 5 4 3 2 1
5. Counts each passenger. 5 4 3 2 1

Passenger Relations

1. Is courteous to all passengers. 5 4 3 2 1
2. Provides accurate information & schedules in a polite manner. 5 4 3 2 1
3. Keeps personal radio at a very low volume. NA 5 4 3 2 1
4. Does not eat or drink in driver's seat and keeps driver's compartment neat. NA 5 4 3 2 1
5. Does not smoke on bus. NA 5 4 3 2 1
6. Waits for passengers who have signaled for the bus. 5 4 3 2 1
7. Keeps bell on and stops at all requested stops. 5 4 3 2 1

Overall Rating
Circle one: 5 4 3 2 1

Summary (brief explanation of overall rating) Vicky has improved her skills. She still drives a little fast for the conditions trying to stay on schedule. This effects her braking because she doesn't feather all of her stops and are a jerk at the end of her stops. She is a perfectionist and I think she is working hard to alter this attitude to her driving. Trying to keep from getting behind. Also curves and turns occasionally a few of her skills are dangerous. She just needs to work on giving the smoothest ride possible at all times in any traffic situations I enjoyed riding with her.

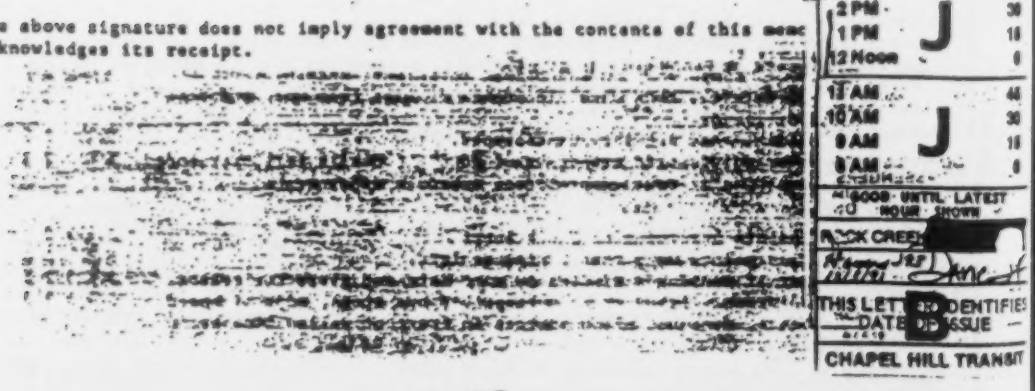
Rating Scale
5 - Performs task with maximum skill
4 - Performs task with excellent skill
3 - Performs task with good skill
2 - Performs task well but needs to make improvement
1 - Performs task poorly and needs to make considerable improvement

Mona S. Moore 12/19/91
SIGNATURE OF EVALUATOR DATE

39 x 6 = 114
9 x 3 = 12
126 ÷ 33 = 3.82

SIGNATURE OF DRIVER DATE

The above signature does not imply agreement with the contents of this [illegible] acknowledges its receipt.



Mrs. Victoria Howard
1000 Smithlevel Rd. Apt. D-10
Carrboro, N.C. 27510
or
P.O. Box 3513
Chapel Hill, N.C. 27515

August 13, 1993

Ms. Johnny M. Barrett- Senior Investigator
U.S. Equal Employment Opportunity Commission
1309 Annapolis Drive
Raleigh, N.C. 27608-2129

Dear Ms. Barrett,

Per my conversation with you via telephone, approximately mid June or beginning of July in reference to my charges against the Town of Chapel Hill / Transportation Dept. on discrimination, I have not received a determination from either you or the Commissioner.

Ms. Barrett, I am not aware if there is a statue Of Limitation for filing for discrimination if I have not heard from your dept. in reference to my discrimination case. Will I loose my right to file a Federal Suite under title V11. I do intend to have my attorney to file once I receive determination decision from E.E.O.C.

My attorney received a letter from you in April 1993, in reference to the commissioner will issue a determination after April 23, 1993, as of this date August 13, 1993 I have not received a certified letter from your department. I have attempted to reach you by phone several times and have been unsuccessful. Please send me and my attorney any information you may have on determination of my case.

Sincerely Yours

cc: Wallace Young
Suite 500 Smoke Tree Tower
3100 Smoketree Court
Raleigh, N.C. 27604
Phone No. (919) 380-8878

APPENDIX S

U.S EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Raleigh Area Office

April 19, 1993

Chocklett and Young

Phil Wells

Suite 500 Smoketree Tower

3100 Smoketree Ct.

Raleigh, NC 27604

Dear Attorney Wells:

Per my conversation with you of April 12, 1993, please be advised that this letter is an acknowledgment of that conversation. It is my understanding that you will be meeting with your client in order to determine if there exists evidence that you wish to submit prior to a determination being made by the Commission on the merits of the charge filed by Ms. Howard against Town of Chapel Hill, Transportation Department.

Per our previous arrangement, the Commission will not issue a determination prior to April 23, 1993. As previously discussed, please submit any evidence you wish considered in the investigation prior to that date.

Thanking you in advance for your cooperation.

Sincerely,

J. M. Barrett

J. M. Barrett

Senior Investigator

CC: Emma V. Howard

P. O. Box 3513

Chapel Hill, N. C. 27515

M. JACQUIE JINES 856-4094

EEOC Use Only
Name (Intake Officer)

INTAKE QUESTIONNAIRE

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

Please answer the following questions, telling us briefly why you have been discriminated against in employment. An officer of the EEOC will talk with you after you complete this form.

DOB: 6-12-54 (Please print) SSN: 245-58-5335

NAME: EMMA Victoria Howard DATE: 29 Oct 92
(First) (Middle Name or Initial) (Last)

ADDRESS: P.O. Box 3513 TELEPHONE NO. (Include area code): 919-967-7005

CITY: Chapel Hill STATE: N.C. ZIP CODE: 27515 COUNTY: Orange

Please provide the name of an individual at a different address who is in the local area and who would know how to reach you.

NAME: Aretha Gainer RELATIONSHIP: Friend TELEPHONE: 967-5212

ADDRESS: CITY: Carrboro STATE: N.C. ZIP CODE: 27510

Why do you believe this action was taken against you?
Because I am a black strong willed female, I am able to comprehend well and articulate

What action was taken against you that you believe to be discriminatory? What harm, if any, was caused to you or others in your work situation as a result of that action? (If more space is required, use reverse.)
Unfair use of my benefits, position
Being disrespected, lost my license, lost of funeral days
Lost of Privileges, Verbal Actions

I believe I was discriminated against by: (Check those that apply)

☑ EMPLOYER ☐ UNION (Give Local No.) ☐ EMPLOYMENT AGENCY ☐ OTHER (Specify)

NAME: Chapel Hill Transit	NAME:
ADDRESS: Municipal Dr.	ADDRESS:
Phone: 968-2769	
CITY, STATE, ZIP CODE: Chapel Hill, NC.	CITY, STATE, ZIP CODE:

APPROXIMATE NUMBER EMPLOYED BY THIS EMPLOYER: WHAT WAS THE MOST RECENT DATE THE HARM YOU ALLEGED TOOK PLACE? Last Ran Pick, In August or Sept.

Are you now employed by the Employer that you believed discriminated against you?

YES: FROM Nov. 13, 1989 (Date) CURRENT POSITION Bus Driver

NO: I APPLIED FOR (Position) OR (Date)

OR: I WAS EMPLOYED AS (Position) UNTIL (Date) (Laid off, Fired, etc.)

Normally, your identity will be disclosed to the organization which allegedly discriminated against you. Do you ☐ consent or ☐ not consent to such disclosure?

Have you sought assistance about the action you think was discriminatory from any Government agency, from your union, an attorney, or from any other source? ☐ No ☐ Yes (If answer is yes, complete below)

NAME OF SOURCE OF ASSISTANCE: DATE:

RESULTS, IF ANY:

Have you filed an EEOC Charge in the past? ☑ No ☐ Yes (If answer is yes, complete below.)

OFFICE, DATE FILED: ORGANIZATION CHARGED: CHARGE NUMBER (If known)

SIGNATURE: E Victoria Howard DATE: 29-Oct 92

EEOC Form 283
AUG 87

6 main # 956-4064.

CASE I.D. T1

Town of Chapel Hill | Victoria E. Howard

DATE	ACTION	ENTERED BY
	# OF EMPLOYEES: (15) 20 25 (Circle One)	KH
	DATE OF HARM (TIMELINESS): 9/29/92	
	STATUTE: [X] T7 [ ]T7/TA [ ]ADEA [ ]EPA [ ]ADA	
	BASIS(ES): RB. OP	
	ISSUE(S): W	
	DESCRIPTION OF EVENTS: Refer to Case Log dated 11/4/92. PCP just wanted to know if she could wait to see what happens to her grievance procedure. PCP was informed of the 180 days. Explained to her that she needed to contact us no later than 2/5/92. Her 180th day will be 3/28/92.	
	Pre-Charge Counselling? [X]Yes [ ]No	
	PCP informed of [X]180 days [ ]2 years.	
	PCP will: [ ]Write Letter [X]Visit RAAO	
	[ ]Visit EPP Location:	
	[ ]Be Interviewed by Telephone on:	
	PCP referred to:	
	[ ]Attempt to contact CP unsuccessful. Attempts were made at:	
	1st: 2nd: 3rd:	
	To Supervisor for review. Recommend 60-day filer	
12104	Reminder.	
12109	60 day	

EEOC FORM 159 [illegible] OF THIS FORM ARE OBSOLETE AND SHOULD BE DESTROYED

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. Bob Godding
TOWN OF CHAPEL HILL,TRANS
189 AIRPORT ROAD
CHAPEL HILL, NC 27514

PERSON FILING CHARGE
Howard, Emma V

THIS PERSON (check one)
[X] CLAIMS TO BE AGGRIEVED
[ ] IS FILING ON BEHALF OF ANOTHER

DATE OF ALLEGED VIOLATION
Earliest: 09/29/92
Most Recent: 09/29/92

PLACE OF ALLEGED VIOLATION
CHAPEL HILL, NC

CHARGE NUMBER
141930349

NOTICE OF CHARGE OF DISCRIMINATION

(See EEOC "Rules and Regulations" before completing this Form)

You are hereby notified that a charge of employment discrimination has been filed against your organization under:

[X] TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

[ ] THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

[ ] THE AMERICANS WITH DISABILITIES ACT

[ ] THE EQUAL PAY ACT (29 U.S.C, SECT. 206(d)) Investigation will be conducted concurrently with our investigation of this charge.

The boxes checked below apply to your organization:

1. [ ] No action is required on your part at this time.

2. [X] Please submit by 02/17/93 a statement of your position with respect to the allegation(s) contained in this charge, with copies of any supporting documentation. This material will be made a part of the file and will be considered at the time that we investigate this charge. Your prompt response to this request will make it easier to conduct and conclude our investigation of this charge.

3. [X] Please respond fully by 02/17/93 to the attached request for information which pertains to the allegations contained in this charge. Such information will be made a part of the file and will be considered by the Commission during the course of its investigation of the charge.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Raleigh Area Office
1309 Annapolis Drive
Raleigh, NC 27608-2129

Johnnie M Barrett Sr. Investigator
(Commission Representative)

(919) 856-4691
(Telephone Number)

[X] Enclosure: Copy of Charge

BASIS OF DISCRIMINATION

[X] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NAT. ORIGIN [ ] AGE [ ] DISABILITY [ ] RETALIATION [ ] OTHER

CIRCUMSTANCES OF ALLEGED VIOLATION

See enclosed Form 5, Charge of Discrimination.

DATE	TYPED NAME/TITLE OF AUTHORIZED EEOC OFFICIAL	SIGNATURE
02/03/93	Richard E. Walz, Director	Richard E Walz

EEOC FORM 131 (Rev. 08/92)

RESPONDENT'S COPY

_____ and EEOC

State or local Agency, if any

NAME (Indicate Mr., Mrs., Mrs.)	HOME TELEPHONE (Include Area Code)
Ms. Emma V. Howard	(919) 967-7005
STREET ADDRESS CITY, STATE AND ZIP CODE	DATE OF BIRTH
P. O. BOX 3513, CHAPEL HILL, NC 27515	06/08/54

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
CHAPEL-HILL. TRANSPORTATION	Cat B (101-200)	(919) 966-2770
STREET ADDRESS CITY, STATE AND ZIP CODE		COUNTY
1089 AIRPORT ROAD. CHAPEL HILL. NC 27514		135
NAME		TELEPHONE NUMBER (Include Area Code)
STREET ADDRESS CITY, STATE AND ZIP CODE		COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST 11/30/93 LATEST 11/30/93
☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. Since August 24, 1993 with the last date being on or about November 30, 1993, I have been forced to use vacation time for the run picks I chose not to accept and not given a merit increase for an "Excellent" evaluation. I was initially hired on November 13, 1989 as a Bus Driver I. Respondent employs more than 15 persons.

II. No reason has been given to me regarding the lack of merit increas and vacation time although I have grieved each of the actions taken against me.

Respondent has no written policies regarding any of the above issues.

III. I believe that I have been retaliated against because I filed a previous Title VII charge #14190349 on February 1, 1993.

☐ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

Date Jan. 24, 1994 Charging Party (Signature) Victoria Howard

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

EEOC Form 5 (Rev. 06/92)

RESPONDENT'S COPY

EXHIBIT A

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY: [ ] FEPA [X] EEOC

CHARGE NUMBER: 141930349

and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)	HOME TELEPHONE (Include Area Code)
Ms. Emma V. Howard	(919) 967-7005
STREET ADDRESS, CITY, STATE AND ZIP CODE	DATE OF BIRTH
P. O. BOX 3513, CHAPEL HILL, NC 27515	06/08/54

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
TOWN OF CHAPEL HILL,TRANSPORT. DEPT	Cat A (15-100)	(919) 966-2770
STREET ADDRESS, CITY, STATE AND ZIP CODE		COUNTY
1089 AIRPORT ROAD, CHAPEL HILL, NC 27514		135
NAME		TELEPHONE NUMBER (Include Area Code)
STREET ADDRESS, CITY, STATE AND ZIP CODE		COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

[X] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[ ] RETALIATION [ ] AGE [ ] DISABILITY [ ] OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE: EARLIEST 09/29/92 LATEST 09/29/92
[ ] CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. I have worked for the Respondent since Oct. 1989 as a Bus Driver I. On or around Sept. 29, 1992, I was denied a "P" route. I was one of approx. 100 Bus Driver, of which approx. 87% are Black. The Respondent employs more than 15 employees.

II. I was told that I was denied the route because another employee had already volunteered for the route.

The Respondent informed me, that it had been the practice of the department ~~had been~~ to put two routes, the "P" and the "P", up for volunteers pror to the run pick off, no one had volunteered, these routes would be assigned to a low seniority driver.

The Respondent's practice has been to post all the runs and allow the employees with seniority to select one run at a time. The least number of runs selected was always three, because it was the Respondent's belief that three runs would add up to 20 hours.

III. I feel that I have been discriminated against because of my race, Black

RECEIVED OCT 6 1993 EEOC RALEIGH DISTRICT

[ ] I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 10/4/93 Charging Party (Signature)

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

EEOC FORM 5 (Rev. 06/92)

FULL SERVICE - SUNDAYS

SCHEDULE 824

SUNDAYS, STARTING OCTOBER 04, 1992

RUN	RT.	BLK.	REPORT	ON LOC.	OFF LOC.	OUT	HRS.	ALL	PAY	TYPE	NAME
101	U	1	10:07AM	10:22AM-G	5:39PM-FE	6:10PM	8:03	00		PT	BROWN, ANN
102	P	3	12:11PM	12:26PM-G	5:59PM-GARLOT	6:05PM	5:55	00		PT	HALL, HARRIET
103	U	1	5:46PM	5:59PM-FE	1:52PM-G	1:57PM	8:11	00		PT	HOLEMAN, KENNITH
104	P	3	5:58PM	5:59PM-GARLOT	1:34PM-G	1:39PM	7:49	00		PT	ALLRED, BEN
201	STBY		9:15PM	SEE NOTE 01		OPEN	2/12:00			PT	STOVER, JASON
202	STBY		3:00PM	SEE NOTE 02		OPEN	2/12:00			PT	HOWARD, VICKIE
203	SRT	1	9:15AM	9:28AM-G	1:00PM-OPEN		3:45				
203	SRT	1		1:38PM-OPEN	5:55PM-G	6:08PM	4:30	00	8:15	SRT	CARTER, BILL
204	SRT	2	9:15AM	9:28AM-G	2:00PM-OPEN		4:45				
204	SRT	2		2:38PM-OPEN	5:55PM-G	6:08PM	3:30	00	8:15	SRT	POUNDS, CHRISTINE
	BLSPT	05	9:00AM			6:15PM		0	9:15	PT	THOMPSON, EVA

NOTE 01 STANDBY RUN 0201 IS AVAILABLE TO COVER BOTH FIXED ROUTE AND SRT RUNS THAT ARE COMPLETED BY 6:30P.M. MAY BE GIVEN A SPLIT REPORT.

NOTE 02 STANDBY RUN 0202 IS AVAILABLE TO COVER P.M. PORTIONS OF THE FIXED ROUTE REPORTS AND FOR LATE U AND P ROUTE COVERAGE. MAY BE GIVEN A SPLIT REPORT.

The North Carolina State Bar

GRIEVANCE COMMITTEE

May 1, 1996

Mrs. Victoria Howard
PO Box 3513
Chapel Hill, NC 27515

Re: Grievance filed against: Curtis J. Rodgers
File number: 94G1135(I)

Dear Mrs. Howard:

This is to advise you that the above-referenced grievance was dismissed by the Grievance Committee of the North Carolina State Bar. Curtis J. Rodgers has been disbarred by the North Carolina State Bar relative to other matters. Therefore, there is no other discipline which can be imposed.

The State Bar will retain your grievance file and it will be considered by the State Bar if Mr. Rodgers petitionss for reinstatement of his license.

Sincerely yours,

Sylvia S. Wood

Sylvia S. Wood

Deputy Counsel

SSW:rc

208 Fayetteville Street Mall/post Office Box 25908/Raleigh, North Carolina 27611/919-828-4620/Fax 919-821-9168

APPENDIX T

CHAPEL HILL TRANSPORTATION DEPARTMENT

O P E R A T I N G B U L L E T I N

NUMBER: 86-38 (Replaces 82-17)

DATE: July 11, 1986 (Revised 6/9/92)

SUBJECT: PART-TIME RUN PICK AND EXTRA ASSIGNMENT GUIDELINES

Run Picks

1. Part-time run picks will be held 3-4 times each year (approximately every three-four months) or as dictated by personnel requirements.

2. The part-time runs, reports and extra duties will be combined into the "Part-Time Extra Board."

3. The exact content of the Part-Time Extra Board will be determined by the number of part-time runs in the run cut, the number of trippers planned, the number of standby reports needed to give adequate coverage and the number of other assignments to be covered.

4. During reduced service periods, the number of part-time reports will be determined by the number of full-time runs which convert to standby reports. This will, in most cases, necessitate laying off part-time and contract drivers. Part-Time drivers not laid off will be given Saturday reports and other assignments.

5. The date, time and place each part-time pick is to be held will be posted (when possible) at least one week prior to the pick. Each part-time driver and contract drivers are required to attend the run pick. If a driver cannot be there, he/she must give his/her choices to the Superintendent in writing, at least 24 hours prior to the pick, A "representative" may be selected to pick for an absent driver if written notice is given to the Superintendent 24 hours in advance. Failure to submit choices in writing will result in the Superintendent making the choices.

6. The Extra Board will be posted at the same time as the notice of the part-time run pick. The Extra board will be as detailed as possible and with estimated pay hours.

7. Any part-time runs which have 5-day reports will be available as one

choice to any part-time driver. The choice will be by seniority. (In rare instances when there is a short-term surplus of part-time drivers, 5-day reports may not be available.)

8. When the content of the Extra Board makes it possible for a part-time driver to obtain his/her minimum weekly hours of 20 from 2 reports, he/she may do so unless there are vacant reports after the 4th round. At that point, he/she must choose a third report. All part-time drivers should be prepared to work a 4th report.

9. All part-time drivers' average work week over a three(3) month period should be at least 20 hours per week but less than 37 1/2 hours per week. Thus, during reduced service period, the weekly hours may be less than 20 and during full service or high demand periods, the weekly totalmay be considerably higher than 20 hours.

10. The order of each part-time run pick will be:

a. 5-day part-time runs - by seniority.

b. Late Saturday U and both Sunday U runs to lowest 3 seniority part-time/contract drivers. (these need not be their first choice unless they wish, but must be their third if they are at that time.)

c. Saturday reports other than the late U will go to the lowest seniority part-time/contract drivers not already scheduled for a weekend run. In that case, all high seniority part-time drivers wishing a Saturday report must so state. Again, the Saturday report does not have to be their first or second report but must be their third.

d. First pick - from the top of the seniority list down until each part-time driver has had a choice.

e. Second pick - from the top of the seniority list down until each part-time driver has had a choice. Concract drivers will begin picking on this round.

f. Third choice - from the top of the seniority list down with high seniority drivers taking their Saturday report if not already picked.

g. Unfilled reports after the fourth round will be offered as fifth reports by seniority. If still unfilled, may be pur up for bid or assigned on a "shared" basis.

Extra Assignments and Vacant Reports

1. Any extra assignments which are added or picked reports which become vacant during the first 30 days of a run pick will be put up for bid. (While bidding is being completed, the vacant reports will be assigned.) If the extra assignments and/or vacant reports are not bid for, they may be dropped. These assignments will be filled by the lowest seniority

driver not having a report that day (with consideration to number of reports and total work hours). The reports will be distributed as evenly as possible and may be "shared."

2. Extra assignments which are added, or reports which become vacant more than 30 days after a run pick has gone into place will be filled as follows:

   a. A bid sheet will be posted at the dispatch window for 7 days.

   b. The bid will be awarded to the highest seniority driver not having a report that day.

   c. If no bids, the report will be assigned to the lowest seniority driver not having 4 reports and/or a report that day and will not go into overtime. If no bids, the report may be split.

   d. 5-day part-time runs will be bid for as a whole piece.

   e. Notice of extra assignments may be given verbally by the dispatcher or with a memo from the Superintendent.

   f. While the bid process is going on, the vacant assignments/reports will be assigned by the Superintendent.

3. Full-time runs which become available after a part-time run pick has been completed will be filled as follows:

   a. Notice of the available full-time position will be posted at the dispatch window. The full-time position will be awarded to the highest part-time driver bidding by the "closing" date.

   b. During the week the full-time position is being bid for, the reports will be filled from the Extra Board if at all pollible. If not, they will be assigned to the lowest seniority driver not having a report that day.

   c. Once the new full-time driver has been selected, he/she will fill the vacant full-time run until the full-time rotation has been completed. This may mean several weeks of switching from run to run until no more full-time drivers bid for the vacated run. The vacant run will then be awarded to the driver who transferred to full-time.

   d. Filling the vacant part-time run which results when a part-time driver transfers to full-time will be filled the same way as any vacant part-time run.

The above guidelines will be followed as closely as practical for the safe, efficient operation of the Division.

CHAPEL HILL TRANSPORTATION DEPARTMENT

O P E R A T I O N B U L L E T I N

NUMBER: 86-38 (Replaces 82-17)

DATE: July 11, 1986 (Revised 5/23/93)

SUBJECT: PART-TIME RUN PICK AND EXTRA ASSIGNMENT GUIDELINES

Run picks

1. Part-time run picks will be held at CHT 3-4 times each year at night (approximately every three-four months) or as dictated by personnel requirements.
2. The date, time and place each part-time pick is to be held will be posted (when possible) at least one week prior to the pick. Each part-time driver and contract drivers are required to attend the run pick. If a driver cannot be there, his/her choices to the Superintendent in writing, at least 24 hours prior to the pick. A "representative" may be selected to pick for an absent driver if written notice is given to the Superintendent 24 hours in advance. Failure to submit choices in writing will result in the Superintendent making the choices.
3. The Extra Board will be posted at the same time as the notice of the part-time run pick. The Extra Board will be as detailed as possible and with estimated pay hours.
4. The exact ccontent of the Part-Time Extra Board will be determined by the number of part-time runs in the run cut, the number of trippers planned, the number of standby reports needed to give adequate coverage and the number of other assignments to be covered.
5. The part-time runs, reports and extra duties will be combined into the "Part-Time Extra Board."
6. During reduced service periods, the number of part-time reports will be determined by the number of full-time runs which convert to standby reports. This will, in most cases, necessitate laying off part-time and contract drivers. Part-time drivers not laid off will
7. All part-time drivers' average work week over a three (3) month period should be at least 20 hours per week but less than 37 1/2 hours per week. Thus, during reduced service period, the weekly hours may be less than 20 and during full service or high demand periods, the weekly total may be considerably higher than 20 hours.
8. Before the actual picking starts, discussions of the following will take place:
   a. What work assignments the run cut consists of.
   b. How the run cut affects the drivers.
9. The order of the Part-Time Run Pick will be:
   a. Any part-time runs which have 5-day reports will be available as one choice to any part-time driver. The choice will be by seniority.

(In rare instances when there is a short-term surplus of part-time drivers, 5-day reports may not be available. These drivers will not work weekends.

b. Late Saturday U and both late Sunday U & P runs go to lowest 3 seniority part-time/contract drivers unless they are picked by a higher seniority driver. These need not be their first choice unless they wish, but must be their third if they pick at that time.

High seniority drivers will be able to bid on the late night Saturday U, and the late night Sunday U and P routes.

c. High seniority drivers will be able to bid on the other 4 Sunday daytime reports.

d. Saturday reports other than the late U will go to the lowest seniority part-time/contract drivers

not already scheduled for a weekend run. High seniority drivers will be able to bid on the Saturday reports other than the late U route.

e. Once the bidding of the high seniority drivers is complete, the weekend reports will be assigned as follows:

1. Late night Saturday U to the lowest seniority part-timer.

2. Late night Sunday U to the 2nd lowest seniority part-timer.

3. Late night Sunday P to the 3rd lowest seniority part-timer.

4. The balance of the 4 daytime Sunday reports will be assigned to the next lowest part- timers on up the roster.

5. The Saturday reports other than the late night U route will be assigned to the next lowest part-timers on up the roster.

f. The weekend reports will be considered as a 3rd pick unless an individual driver (even those having bid on a specific report, such as the late Saturday U route) chooses to pick his/her weekend report on the first or second round.

g. After the 5 day reports and weekend reports have been allotted, the weekday reports will be picked.

1. First pick - The order of the pick will be onereport per driver starting at the top of the part-time roster.

2. Second pick - from the top of the seniority list down until each part-time driver has had a choice. Contract drivers will begin picking on this round.

3. Third pick - The process will be continued through the first 3 rounds. At this point, drivers who do not wish to take a 4th or 5th report may drop out. (It is important for part-time drivers to remember that to qualify for part-time benefits, their average work hours must be at least 20 hours per week).

4. Those wishing to, will continue through the 4th and 5th rounds.

When the content of the Extra Board makes it possible for a part-time driver to obtain his/her minimum weekly hours of 20 from 2 reports, he/she may do so unless there are vacant reports after the 4th round. At that point, he/she must choose a third report. All part-time drivers should be prepared to work a 4th report.

5. Any vacant reports after the 5th round will be assigned in the following manner while a "posted" bidding is in process.

a. Any vacant report will be assigned to the lowest seniority driver not having a report on that day and/or 5 reports.

b. When possible, reports will be assigned on a rotating basis.

c. The vacant reports will be put for bid a.s.a.p. Assignment will be made by considering number of reports, total scheduled work hours, time of reports in relation to reports already picked, seniority and other operational considerations. If still unfilled, the vacant reprts mauy be put up for bid or assigned on a "shared" basis.

h. Other considerations:

1. Drivers are reminded to watch the total work hours picked so as not to exceed 40 hours per week. If a driver picks moré that 40 work hours his/her schedule may have to be adjusted by the Superintendent.

2. Reports should be a minimum of 12 hours from off time one day to on time the next day. Picking reports within this guideline is the driver's responsibility.

3. Any driver wishing to do somay choose to work both Saturday and Sunday. This must be made when the "bidding" is done prior to the beginning of the picking.

4. Drivers may "team up" and volunteer for a report left vacant after the fifth round if avoidable overtime is not involved.

5. Permanent run switches after a run pick is complete are not accceptable.

6. Drivers must make their choices within 1 to 2 minutes.

7. Drivers not repsonding when their name is called to take a "pick" will have a report picked by the Superintendent.

8. Drivers not able to attend the run pick must give written advance notice; giving the Superintendent an explanation of his/her absences and appointed another driver to pick his/her reports. The alternate is not named, the Superintendent will pick. The choices made by the alternate or Superintendent are valid and will hold for the duration of the run pick.

9. A copy of the run assignment sheets will be posted on the board by Friday prior to the start of the run cut.

Extra Assignments/Vacant Reports and Vacant Reports Run Bid

1. Any extra assignments which are added or picked reports which become vacant during the first 30 days of a run pick will be put up for a bid. (While bidding is being completed, the vacant reports will be assigned.) If the extra assignments and/or vacant reports are not bid for, they may be dropped. These assignments will be filled by the lowest seniority driver not having a report that day (with consideration to number of reports and total work hours). The reports will be distributed as evenly as possible and may be "shared."
2. Extra assignments which are added, or reports which become vacant more than 30 days after a run pick has gone into place will be filled as follows:
   a. A bid sheet will be posted at the dispatch window for 7 days.
   b. The bid will be awarded to the highest seniority driver not having a report that day.
   c. If no bids, the report will be assigned to the lowest seniority driver not having 4 reports and/or a report that day and will not go into overtime. If no bids, the repot may be split.
   d. 5-day part-time runs will be bid for as a whole piece.
   e. Notice of extra assignments may be given verbally by the dispatcher or with a memo from the Superintendent.
   f. While the bid process is going on, the Vacant assignments/reports will be assigned by the Superintendent.
3. Full-time runs which become available after a part-time run pick has been completed will be filled as follows:
   a. Notice of the available full-time position will be posted at the dispatch window. The full-time position will be awarded to the highest part-time driver bidding by the "closing" date.
   b. During the week the full-time position is being bid for, the reports will be filled from the Extra Board if at all possible. If not, they will be assigned to the lowest seniority driver not having a report that day.
   c. Once the new full-time driver has been selected, he/she will fill the vacant full-time run until the full-time rotation has been completed. This may mean several weeks of switching from run to run until more full-time drivers bid for the vacated run. The vacant run will then be awarded to the driver who transferred to full-time.
   d. Filling the vacant part-time run which results when a part-time driver transfers to full-time will be filled the same way as any vacant part-time run.

The above guidelines will be followed as closely as practical for the safe, efficient operation of the Division.

MEMORANDUM

TO: Operations Division Bus Drivers

FROM: Robert Godding, Director of Transportation

SUBJ: Driver Standards

DATE: February 5, 1990

Attached is a copy of the Standards for Bus Driver Evaluations. These Standards have been rewritten to clarify their application for Development Range evaluations. That is, we have added the numerical standards that apply to six month evaluations. Those sections that have been added are highlighted for easy identification. We have not changed the standards from what has been used for the last five years, but have written them out for clarification.

If any of you have questions or comments on these please talk to Lois or me. Thank you.

As I mentioned in the meetings held with drivers before the Holidays, I am willing to consider any reasonable suggestions to change these standards at any time. Several suggestions were made at those meetings. We are evaluating those and may make changes in the near future. Any changes made will be posted for comments prior to implementation.

As the nature of our work changes, these standards may have to be modified. However because of their importance and complexity we do not wish to change them unless it is necessary to do so.

cc: Lois Magnell
Pat Crotts

APPENDIX V

PERFORMANCE STANDARDS & RATING SYSTEM FOR CHT BUS DRIVER I's

REVISED JANUARY, 1991

STATEMENT OF PURPOSE

In conjunction with the adoption of a merit based pay plan (effective October 1, 1984) work standards have been developed by a committee of drivers, dispatchers and management personnel. These standards cover the major areas of Driver I duties and responsibilities. The standards will be the basis of Mid-Year and Annual Evaluations. These performance standards are divided into three required categories and two additional categories for assignments which would only apply to certain employees. Each required category has a point value based on the relative importance within Driver I duties and responsibilities. These would normally total 100 points. Ratings in Category IV and V will be dependent upon the actual amount of work performed on those tasks. Points earned in Category IV and V will be substituted for a part of the score earned in Category I. With the exception of any bonus points the total rating will be done on a basis of 100 points. **See Sample Calculations for Rating**

The cut off point for below expected level will be 66 2/3. Any driver who receives a score which is within 1 or 2 points from each cut off point will have his/her evaluation and overall job performance carefully reviewed. If appropriate the rating will be adjusted up or down to more accurately reflect his/her job performance and to obtain a fair evaluation.

Standards established herein may not be all inclusive. Specific actions on the job may not be covered by any particular standard. In such a case the supervisor may consider such action in an appropriate manner (either positively or negatively) as a part of the overall evaluation. The Town has a parallel disciplinary policy and actions taken under this will be taken into consideration when rating an evaluation. The type of disciplinary action taken and the reason for the action will be taken into consideration when adjusting the overall evaluation rating. No driver who has received a formal disciplinary action will be given an above rating for the evaluation period during which the action was received.

SAMPLE CALCULATIONS FOR RATING

Step 1. If no additional duties are performed, the total score is equal to the total of all points earned in categories I to III.

Example:

Total points (Cat. I to III) = 87.5 TOTAL SCORE = 87.5

Step 2. If any additional duties are performed, the points earned for these are added to the points earned for categories II and III. The value of points earned in category I are then adjusted so that the total score is still based on 100 points.

Example: Points earned in Cat. IV to VI = 15.00
Points earned in Cat. II & III = 37.50
Pts earned in Cat. I = 50 X 60 - 15 (add. duty pts) = 37.499
Possible pts in Cat. I = 60

Total Score

89.99

Step 3. If any disciplinary actions are taken during the evaluation period, then penalty points may be deducted from the total score.

Example:
Total Score = 89.99
Adjustment for final warning issued
= 10.00

Adjusted Total

Score = 79.99

RATING

Rating will be mandatory for all tasks included in Categories I, II, and III. Ratings in Categories IV, V and VI will depend on whether those tasks are actually performed.

CATEGORY I - 60 POINTS

A. Safety and Accidents
20 Points

B. Supervisor Evaluations
15 Points

1. On-Board - 7 1/2 Points
2. On Street - 7 1/2 Points

C. Schedule Adherence and Relief's
12 Points

D. Operator Duties
6 Points

E. Miscellaneous
7 Points

1. Uniform Code - 2 Points
2. Block Sheets - 2 Points
3. Defect Cards - 2 Points
4. Care of Personal Equipment - 1 Point

Category II - 15 Points

A. Punctuality
7 1/2 Points

B. Attendance
7 1/2 Points

Category III - 25 Points

A. Public Relations
10 Points

B. Dispatcher Evaluations
15 Points

Category IV - (Up to 20 Points)

A. Standby Assignments

Category V - (Up to 20 Points)

A. Voluntary Assignments

1. Fill-In Dispatching
2. Fill-In E-Z Rider Driving
3. New Driver Route Training
4. Charters (**Tarheel Express**)

Category VI - (Up to 5 Bonus Points)

A. Commendations

1. Public Service Commendations **(excluded)**
2. Special Commendations

PERFORMANCE STANDARDS - CATEGORY I

I-A. SAFETY AND ACCIDENTS - 20 Points

An accident is that which involves any CHT employee or vehicle while working in the performance of the Town business and which results in loss to either the Town, the employee or any other party. All accidents and incidents will be Investigated to determine preventability or non-preventability on the part of the CHT employee involved. Preventable accidents or incidents are those in which the investigating superior determines that the employee involved failed to take all possible actions to avoid the accident. Only "preventable" accidents or incidents will be considered in a performance evaluation.

On-the-job injuries will be reported and investigated in the same manner a accidents and incidents.

During training drivers are taught and encouraged to use defensive driving skills. All employees are expected to follow safe practices while on the job. On the job injuries occasionally occur through employee negligence or mis-use of equipment and these cause loss of time or unnecessary expense. All accidents and incidents must be reported. Failure to do so could result in considerable difficulty in investigating the accident to determine the causes.

A preliminary examination of the injured employee by a doctor may be required by his/her supervisor. Any professional medical treatment beyond the preliminary examination will be considered as a cost to the Town and will be included, along with other information, in the classification of the accident. Each report of injury will be investigated, classified and recorded.

The points lost for the second accident will be double the value of the first. For example: Driver A has two minor accident. The first is a deduction of 7 points and the second will be a deduction of 14 points. Therefore, Driver A will not receive any points for this category.

The following definition will be used in the Transportation Department for the classification of accidents and incidents (vehicular and non-vehicular).

1. Insignificant accidents - property damage less than $50; or personal injury requiring only minor first aid (such as aspirin or ban aids) and not more than 15 minutes time loss. This includes damage to Town or private property or injury or loss of time to Town employees or private citizens.

2. Minor accidents - property damage over $50 but less than $800; or personal injury requiring professional medical examination or treatment; or time lost from work between 4.5 to 48.0 hours.*

3. Major accidents - property damage over $800 or personal injury resulting in treatment over $800; or time lost from work over 48.0 hours.*

4. Incidents - any near accident in which no claims for damages were made but where people or property were placed in considerable jeopardy through a violation of traffic laws or safety procedures.

Points for each type of preventable accident or incident will be deducted from the total of 20.

STANDARDS IDENTICAL FOR FULL YEAR AND SIX MONTH EVALUATION

1. Incident or Insignificant Accidents	
a. No damage or personal injury each	1 point
b. Up to $50 damage or medical care each	3 points
2. Minor Accidents each	7 points
3. Major Accidents each	20 points

4. Unreported Accidents or Incidents each 5 points

*48 hours is equivalent to $500 (the job rate for Driver I wages plus benefits is $10.60 /hour.)

I-B. SUPERVISOR EVALUATION - 15 Points

1. On-Road Evaluations - 7 1/2 points

STANDARDS IDENTICAL FOR FULL YEAR AND SIX MONTH EVALUATION

Twice a year, on-board evaluation are done by transit supervisors. These evaluation determine the driver's overall driving skill, safety practices, proper procedure application, fare knowledge and passenger relations.

7 1/2 points will be earned for an above expected level rating.

5 points will be earned for an at expected level rating.

0 points will be earned for a below expected level rating.

2. On-street Evaluation - 7 1/2 Points

STANDARDS IDENTICAL FOR FULL YEAR AND SIX MONTH EVALUATION

On a daily basis supervisors will observe the vehicle operation of drivers while performing time checks and other street duties. Both positive and negative observations will be logged in individual driver logs kept collectively by all three street supervisors.

7 1/2 points will be earned if the collective evaluation by the three supervisors is that the driver's on-street performance is above expected level.

5 Points will be earned if the collective evaluation by the three supervisors is at expected level.

0 points will be earned if the collective evaluation by the three supervisors is below expected level.

I-C. SCHEDULE ADHERENCE AND RELIEF'S - 12 Points

The main objective of the Transportation Department is to provide the residents of Chapel Hill and Carrboro with safe and reliable transit services. One of the elements by which the transit system is judged is schedule adherence - reliability.

In judging on-schedule adherence there will be contributing factors considered other than just whether the driver failed to maintain a schedule. Such factors are: traffic conditions. detours. mechanical problems, heavy passenger loads, schedule changes. late relief's(other than due to driver error) and any other circumstances beyond the driver's control. Under normal circumstances the following standards of schedule adherence should be met:

Schedule adherence is defined as not leaving a timepoint ahead of schedule or more than 5 minutes late. Unusual events, inclement weather, heavy traffic, or faulty schedule which affect a timepoint will exclude that timepoint. Any such events must be reported by the driver to the dispatcher for logging if it causes the bus to be five or more minutes late or consistently early. Any variance in the schedule caused for a valid reason and logged by the dispatcher will not be charged to the driver involved. Late relief's are not being at the locations at the specified time and not having notified dispatcher of valid reason for being late.

All report and relief times are designed with adequate travel time so that all drivers should be at all on-road relief points on time. Break schedules are designed with travel time between terminals and with some leeway for late buses. Drivers are expected to relieve all base drivers on time. On these occasions when traffic, detours. mechanical failures or other occurrences beyond a relief driver's control. causes a late relief, that occasion will not be counted.

STANDARDS FOR FULL YEAR EVALUATIONS

12 points will be earned if there is not more than one occasion of avoidable late or early at a timepoint or making a late relief.

8 points will be earned for two to four occasions of avoidable late or early at a timepoint or not more than three occasions of making a relief late.

0 points will be earned for 5 or more occasions or (of) avoidable late or early at a timepoint or not more than four occasions or making a relief late.

STANDARDS FOR SIX MONTH EVALUATIONS

12 points will be earned if there are zero occasions of avoidable late or early at a timepoint or making a late relief.

8 points will be earned for 1 or 2 occasions of avoidable late or early at a timepoint or not more than 1 occasion of making a late relief.

0 points will be earned for 3 or more occasions of avoidable late or early at a timepoint or make a relief late.

I-D. OPERATOR DUTIES - 6 Points

Each driver is expected to operate CHT vehicles and perform all job duties in a professional and safe manner. And, in accordance with published procedures, policies, memos and as taught in training sessions.

Data for this standard will be drawn from dispatch logs, supervisor logs, timecheck forms and individual operating/personnel files.

This category will include all items regarding operating a bus such as; using the proper layover, displaying the proper headsign, following line of route, following detours, and all other operating duties.

STANDARDS FOR FULL YEAR EVALUATIONS

6 points will be earned if there are zero negative notations.

4 points will be earned if there are not more than 1 to 3 negative notations.

0 points will be earned if there are 4 or more negative notations.

STANDARDS FOR SIX MONTH EVALUATIONS

6 points will be earned if there are zero negative notations.

4 points will be earned if there are not more than 1 negative notations

0 points will be earned if there are 2 or more negative notations

I-E. MISCELLANEOUS - 6 Points

1. Uniform Code - 2 points

All drivers are provided with uniforms consisting of pants, shirts, and name tag. These uniforms are provided at the Town's expense. Each driver is expected to keep his/her uniform clean and wrinklefree. Normal wear is expected and worn uniforms will be replaced at the Town's expense. Uniforms are to be worn and cared for in accordance with Operating Bulletin No. 82-46. Between Specified dated (posted each spring) drivers may wear shorts or culottes (women only on the culottes) which are dark or navy blue, polyester-cotton fabric, no trim and no more than 3 inches above the knee when the wearer is standing.

Under certain circumstances, such as lost name tag, sudden weight shift and pregnancy, drivers are placed on an Exempt List.

STANDARDS IDENTICAL FOR FULL YEAR AND SIX MONTH EVALUATIONS

2 points will be earned if the overall dispatcher and supervisor rating is above expected level.

1 point will be earned if the overall dispatcher and supervisor rating is at expected level.

0 points will be earned if the overall dispatcher and supervisor rating is below expected level.

2. Block Sheets - 2 Points

Block sheets should be completed showing date, run driver, and passenger count for each trip. Notations should also be made in case of detours, accidents, breakdowns, etc., to explain any missing passenger counts.

STANDARDS FOR FULL YEAR EVALUATIONS

2 points will be earned if no more than two Block Sheets are completed improperly.

1 point will be earned if there are three to four occasions of incomplete Block Sheets.

0 points will be earned if there are five or more occasions of incomplete Block Sheets.

STANDARDS FOR SIX MONTH EVALUATIONS

2 points will be earned if no more than one Block Sheet is completed improperly.

1 point will be earned if no more than two Block Sheets are completed improperly.

0 points will be earned if three or more Block Sheets are completed improperly.

3. Defect Cards - 2 Points - 1 Point

Each run and switchout driver must enter the run, route, block information at the top of each Defect Card. The first driver is responsible for the date and bus number. Each driver of the bus must complete a pre-trip inspection and note in defects.

STANDARDS FOR FULL YEAR EVALUATIONS

2 points will be earned if no more than two Defect Cards and pre-trips are completed improperly.

1 point will be earned if there are three to four occasions of incomplete Defect Cards and pre-trips.

0 points will be earned if there are five or more occasions of incomplete Defect Cards and pre-trips.

STANDARDS FOR SIX MONTH EVALUATIONS

2 points will be earned if no more than 1 Defect Card and pre-trip is completed improperly.

1 point will be earned if there are no more than 2 Defect Cards and pre-trips are completed improperly.

0 points will be earned if there are no more than 3 Defect Cards and pre-trips are completed improperly.

4. Care of Personal Equipment - 1 Point

Each CHT driver is issued the following items of personal equipment:

Uniforms, Name Tag, Handbook, Lift Key, Bus Pass, Ice Scraper, Transfer Punch, and Transfer Punch Pouch.

The driver is expected to take proper care of these items and maintain them in good working order. Any item damaged beyond use through neglect or misuse or loss must be paid for by the driver who was issued the item.

STANDARDS IDENTICAL FOR FULL YEAR AND SIX MONTH EVALUATIONS

1 point will be earned if the driver does not lose any equipment, damage any equipment, or pays for lost or damaged equipment within 30 days.

0 points will be earned if any lost or damaged equipment is not paid for within 30 days.

PERFORMANCE STANDARDS - CATEGORY II

II - PUNCTUALITY AND ATTENDANCE - 15 Points

A. Punctuality - 7 1/2 points

In a time-sensitive service such as public transportation, it is essential that drivers report to work on time so that vehicles are sent out on time. A late report is any time a driver reports or call in sick more than three minutes after his/her scheduled report time (first or second report). A no-show is reporting 15 minutes or more late without a phone call to the dispatcher prior to 15 minutes or after the report time or a sick call that is received 15 or more minutes after report time, or failure to report for an entire half or whole report. All lates and no-shows are recorded on the dispatch logs and UV/X time is charged to the driver's vacation leave.

STANDARDS FOR FULL YEAR EVALUATIONS

7 1/2 points will be earned if there is no more than one late and 0 no-shows.

5 points will be earned if there are two to four lates, one of which may be a no-show.

0 points will be earned if there are five or more lates or more than one no-show.

STANDARDS FOR SIX MONTH EVALUATIONS

7 1/2 points will be earned if there are zero lates or no-shows.

5 points will be earned if there are no more than two lates, one of which may be a no-show.

0 points will be earned if there are three or more lates or more than one no-show.

B. Attendance - 7 1/2 Points

Attendance is defined as the use of authorized leave within Town and division guidelines. When an employee is absent from work without authorized leave the time lost will be charged either to his/her vacation leave balance as unauthorized vacation, UV, or to unpaid time, X, if the vacation balance is exhausted. Any accumulation of UV/X time may be grounds for disciplinary action.

Procedures have been established for requesting authorized leave for vacation, civil, funeral and military leave. The unauthorized or unverified use of these types of leave may result in UV/X assessment. Such UV/X assessment will be dealt with in attendance. Sick leave is also authorized for personal and family illness.

All division employees will be given an informational counseling if their sick leave balance fall below 24.0 hours; if occasions of use is more than 1 1/2 times the average (more than 18 occasions) during 12 month period; or if there is a pattern of use that suggests abuse of sick leave. Persistent problems with low balances, higher than average uses, assessment of UV/X due to lack of sick leave, or patterns of use that suggest possible abuse will result in a counseling. If UV/X time is assessed for any absence not covered by authorized leave, counseling or disciplinary action may be taken. (See Operating Bulletin 85-14, Sick Leave Policy, for further information). (Generally, this standard will not consider UV/C time accumulated for punctuality which is covered above.)

STANDARDS FOR FULL YEAR AND SIX MONTH EVALUATIONS

7 1/2 points will be earned if the driver uses all authorized leave in accordance with Town and department policy and is not counseled for a low balance or suspicious pattern of use and is not placed under a doctor's slip requirement, and has not accumulated any UV/X time.

5 points will be earned if there has not been more than one occasion of counseling and he/she is not under a doctor's slip requirement, and has not accumulated any UV/X time.

0 points will be earned if there have been 2 or more counseling, any UV/X assessment due to lack of authorized leave or if a doctor's slip requirement is in place.

(Exceptions will be made for new employees until they have had sufficient time to build an adequate sick leave balance, and for major illnesses requiring outpatient care or hospitalization which is verified by a doctor's slip.)

III. COMMUNICATION AND INTERACTION - 25 Points

A. Public Relations - 10 Points

CHT drivers are the only contact most patrons have with the Transportation Department. As such, drivers are the best salespersons of the transit service. Each driver has been trained in public relations techniques and is expected to practice these most of the time. One way to judge if a driver is practicing good public relations is evaluation complaints where the driver was not at fault will not be considered.

STANDARDS FOR FULL YEAR AND SIX MONTH EVALUATIONS

10 points will be earned if there are no preventable passenger complaints during evaluation period; maintains a pleasant, courteous relationship with passengers even under trying circumstances; provides accurate operating information willingly and pleasantly; enforces CHT policies which apply to passengers in a consistent and professional manner.

6 1/2 points will be earned if there is no more than 1 preventable passenger complaint during the evaluation period; knows operating information and provides it accurately; maintains a pleasant, professional relationship with passengers the majority of the time.

0 points will be earned if there are 2 or more preventable passenger complaints.

B. Dispatcher Evaluations - 15 Points

Dispatchers will evaluate all drivers informally on a daily basis, recording both positive and negative observations on the dispatch log or individual driver logs. A formal dispatcher evaluation will be done at the end of each run-pick. Full-time drivers will have 4 such evaluations and part-time drivers will have 3-4. (The dispatcher evaluation will include Section III-B, III-C, IV., 11 and IV., 12 of the Dispatcher Evaluation of Driver form.)

STANDARDS FOR FULL YEAR AND SIX MONTH EVALUATIONS

15 points - all above expected level.

12 1/2 points - 1/2 above expected level and no below expected level.

10 points - all at expected level, no below.

5 points - no more than one below expected level.

0 points - 2 or more below expected level.

V. Voluntary Assignments - 20 Points

Drivers who have volunteered and have been selected for these assignments will be evaluated in these category. The rating will count between 5 and 20 points depending on the hours of duty and the actual tasks performed during the evaluation period. The evaluation will be done by the administration, dispatchers and supervisors.

They will also determine the value of the rating. The points earned in this category will be prorated as part of Category I which then counts for between 55 or 40 points respectively, unless a standby rating is also completed.

1. Fill-In Dispatching - 5 Points

Drivers may volunteer for formal fill-in dispatch training. Once the classroom and on-the-job training is complete, vacant dispatch shifts may be volunteered for. Fill-in dispatchers are expected to cover dispatch shifts in the same professional manner as regular duties. An evaluation form will be completed for any fill-in dispatcher who works for more than 40.0 hours during a 6 **month or** calendar year **evaluation period.**

2. Fill-In E-Z Rider Driver - 5 Points

While on standby, any part-time or full-time driver may be given an occasional or several E-Z Rider pick-ups to make. All standby drivers are expected to accept these assignments in the same manner as any other driving assignment. Drivers may volunteer to fill any temporarily vacant, partial or whole, E-Z Rider driving shift.

3. New Driver Route Training - 5 Points

One very important aspect of new driver training is the On-Route instruction provided by experienced, permanent drivers. Drivers with a good safety record, good public relations and an overall rating of at expected or higher will be selected to be on-route trainers.

4. charters - 5 Points (Tarheel Express)

Drivers who perform 10 or more charters per year will be evaluated by the charter supervisor with input from patrons.